

NOMINATION OF JAMES E. CASON

HEARINGS BEFORE THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE ONE HUNDRED FIRST CONGRESS FIRST SESSION

ON

JAMES E. CASON, OF VIRGINIA, TO BE ASSISTANT SECRETARY FOR
NATURAL RESOURCES AND ENVIRONMENT

SEPTEMBER 27 AND OCTOBER 4, 1989

Printed for the use of the
Committee on Agriculture, Nutrition, and Forestry



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NOMINATION OF JAMES E. CASON, TO BE ASSISTANT SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE

WEDNESDAY, SEPTEMBER 27, 1989

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The committee met, pursuant to notice, at 10:30 a.m., in room 332, Russell Senate Office Building, Hon. Patrick J. Leahy (chairman of the committee) presiding.

Present or submitting a statement: Senators Leahy, Heflin, Conrad, Fowler, Daschle, Baucus, Kerrey, Lugar, Helms, Cochran, Boschwitz, Bond, and Gorton.

The CHAIRMAN. Good morning. I apologize for the delay.

Before I give any opening statement, I know Congressman Smith is on a very tight schedule with hearings and meetings over on the other side and is here to introduce Mr. Cason. I always consider it an honor when we can be joined by Members from the other bodies, especially when it happens to be a good personal friend of mine. So, I want to yield to him first, if the other Senators do not mind, for his introduction of Mr. Cason so that if he has to leave, he can.

I also understand, Mr. Cason, that your parents are here this morning.

Mr. CASON. Yes, they are, Senator.

The CHAIRMAN. Could you introduce them to us, please?

Mr. CASON. I would appreciate that opportunity. Thank you, sir.

I would like to introduce my parents to the committee. This is my father, James Alton Cason.

The CHAIRMAN. Mr. Cason.

Mr. CASON. He is the person who took me out on the farm and taught me how to do things.

And this is my mother, Joan Ann Cason. She is the patience and grace in the family.

And my beautiful fiancée, Susan Hoven.

The CHAIRMAN. Thank you. Ms. Hoven. Delighted to have all three of you here. I am sure this must be a matter of some pride to the three of you, to have a chance to be here with Mr. Cason.

Congressman Smith, I yield to you, sir. I am delighted to have you here. We have done things together on agriculture and other matters over the years, and I am glad to have you here.

STATEMENT OF HON. ROBERT F. (BOB) SMITH, A REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT, STATE OF OREGON

Mr. SMITH. Well, Mr. Chairman, it is my privilege to be here. And thank you for your gracious introduction.

Mr. Chairman and members of the committee, I am here this morning taking an opportunity to enthusiastically endorse Mr. James E. Cason for the post of Assistant Secretary of Agriculture for Natural Resources and Environment.

Mr. Cason was selected for this position by the President and Agriculture Secretary Clayton Yeutter because of his extensive experience in farming, conservation, and management. Even at an early age, Mr. Chairman, at age 6, Jim Cason began to work in the fields harvesting tree crops and as a preteen learned first-hand about agriculture as one of a family of tenant farmers in my own home State of Oregon.

So this is a man of the land, a man who has worked with his hands, and works with his head as well.

He attended Pacific University in the great State of Oregon, with the assistance of an academic scholarship. By the way, Mr. Chairman, that is the second preeminent university in the State of Oregon. The first is my alma mater, but I will not mention that particular name.

The CHAIRMAN. I wondered if that might be the case in rank because—

Mr. SMITH. It is possible.

The CHAIRMAN [continuing]. Because we have a way of ranking schools in Vermont that way too, depending upon whether it is Senator Jeffords or myself introducing a panel.

Senator BOSCHWITZ. But there are not two schools in Vermont, are there? [Laughter.]

The CHAIRMAN. You know, one of the ways the administration is going to save a lot of money is the fact we will not have to spend any money in next year's farm bill in Minnesota. [Laughter.]

Mr. SMITH. Please, let us not play around on the farm bill today. [Laughter.]

The CHAIRMAN. Oh, you have to give us something.

Never mind. Go ahead, Mr. Smith.

Mr. SMITH. Mr. Chairman, Mr. Cason distinguished himself at Pacific University by graduating magna cum laude.

His first job with the Federal Government came in 1982, and he was appointed in 1985 to a very controversial post as Deputy Assistant Secretary for Land and Minerals Management.

In this position, Mr. Cason managed some 700 million acres of wilderness areas, wild and scenic river areas, fish and wildlife programs, oil and gas operations, coal mining, timber harvesting, grazing, recreation, and more. In addition, he regulated all U.S. mining and royalties management on 2 billion offshore acres managed by the Department. Obviously, Mr. Cason's professional and managerial qualifications are extensive. I am certainly not alone in that belief.

In a letter supporting Mr. Cason for this position, eight of your Senate colleagues said, and I quote, "Jim Cason has repeatedly

demonstrated his ability to weigh all sides of an issue, base his decision on the pertinent facts and circumstances and then defend his decision with confidence, professionalism, and determination."

The letter added: "Mr. Cason is a man of integrity. He is well-respected, loyal, deliberate, intelligent, and capable." Now, your colleagues said that, Mr. Chairman. I could not agree more with your fellow Senators.

Mr. Cason also enjoys the widespread support of America's agricultural community. He has been endorsed by nearly every major farm and natural resource group in America, including the American Farm Bureau, the National Cattlemen's Association, the National Cotton Council, the National Corn Growers Association, the Forest Timber Products Association, the American Soybean Association, and more than a dozen other groups.

Mr. Chairman, at this point, I would request that six letters in my possession from these national organizations and others be entered into the record.

The CHAIRMAN. Without objection.

[The prepared statement of Mr. Smith and the letters follow:]

CONGRESSMAN BOB SMITH (OR-02)

**Testimony on behalf of Mr. James E. Cason
for the post of**

**Assistant Secretary of Agriculture for
Natural Resources and the Environment**

**United States Senate Committee on Agriculture
September 27, 1989**

Chairman Leahy, Senator Lugar, and Members of the Committee, I appreciate the opportunity this morning to enthusiastically endorse Mr. James E. Cason for the post of Assistant Secretary of Agriculture for Natural Resources and the Environment.

Jim Cason was selected for this position by president George Bush and Agriculture Secretary Clayton Yeutter because of his extensive experience in farming, conservation, and management. At age six, Jim Cason began to work in the fields harvesting tree crops and as a pre-teen learned first-hand about agriculture as one of a family of tenant farmers in my home state of Oregon.

Jim took his first job in the Interior Department in 1982 when he became Special Assistant to the Director of the Bureau of Land Management. In 1985, he was promoted to principal Deputy Assistant Secretary for Land and Minerals Management at the Interior Department, and he assumed the responsibilities of a most important and, at times, controversial post. In his position, Mr. Cason managed 700 million acres of wilderness areas, wild and scenic rivers, fish and wildlife programs, oil and gas operations, coal mining, timber harvesting, grazing, recreation, and more. In addition, he regulated all U.S. mining and royalties management on 2 billion offshore acres managed by the department. Obviously, Mr. Cason's professional and managerial qualifications are extensive. I am not alone in that belief.

In a letter supporting Mr. Cason, eight of your Senate colleagues said, and I quote: "Jim Cason has repeatedly demonstrated his ability to weigh all sides of an issue, base his decision on the pertinent facts and circumstances and then defend his decision with confidence, professionalism, and determination."

The letter added: "Mr. Cason is a man of integrity. He is well-respected, loyal, deliberate, intelligent, and capable." Mr. Chairman, I could not agree more with your fellow Senators.

Mr. Cason also enjoys the widespread support of America's agricultural community. He has been endorsed by nearly every major farm and natural resource group in America, including the American Farm Bureau, the National Cattleman's Association, the National Cotton Council, the National Corn Growers Association, the Forest Timber Products Association, the American Soybean Association, and more than a dozen other groups.

Mr. Chairman, at this point I request that six letters in my possession from these national organizations and others be entered into the record.

Thank you, Mr. Chairman.

Mr. Cason's detractors have criticized him for not adhering to their own agenda, which is predictable given the enormous difficulty and complexity of the job he previously held. Those detractors overlook Mr. Cason's support for expanding wilderness areas, placing greater control over recreational areas, expanding the nation's historic trails, and restricting mining within national parks. Simply put, it is not an easy task to make decisions when you realize that at some time, someone is going to blower and for not deciding in their favor.

At this time of year, I am unavoidably reminded of the difficult task umpires face. Each day, an umpire makes dozens of tough calls knowing that whatever call he makes will make him the hero to one team and the villain to another. And when the day ends, some leave the playing field celebrating and some leave bitterly disappointed. The umpire just leaves, Mr. Chairman, secure in the knowledge that he calls them like he sees them.

Jim Cason calls them like he sees them. The only difference is that the management of America's natural resources is no game, it is serious business. That makes it all the more important that the Assistant Secretary for Natural Resources and the Environment has the courage to weigh the facts, make the right decision, and then stand by his decision.

I am absolutely convinced that James E. Cason is capable of displaying the courage to stand by his convictions in this most important post, even as he has in the past. I have every confidence in President Bush's decision to nominate him, every confidence in Secretary Yeutter's enthusiasm for him, and every confidence that what I know to be a truly difficult job will be in the hands of one who is no stranger to difficulty. We must accept no less for this position.

Mr. Chairman, I am happy to give Jim Cason my unqualified recommendation for the post of Assistant Secretary of Agriculture for Natural Resources and the Environment, and happier still to urge that this committee do the same.

Again, Mr. Chairman and Members of this Committee, I appreciate the opportunity to appear before the committee. Thank you very much.

#

LETTER INDIVIDUALLY ADDRESSED TO MEMBERS OF THE SENATE
AGRICULTURE, NUTRITION AND FORESTRY COMMITTEE.

September 26, 1989

The Honorable Patrick Leahy, Chairman
Senate Agriculture, Nutrition and Forestry Committee
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

We the undersigned are writing to urge your favorable consideration of the nomination of Jim Cason to be Assistant Secretary of Agriculture.

Nearly seven months have passed since Mr. Cason's nomination. We are deeply concerned that this essential position has not yet been filled. The position of Assistant Secretary for Natural Resources and Environment is one with important policy and oversight responsibilities within the Department of Agriculture. The office oversees the Soil Conservation Service and Forest Service which together employ nearly one-half of the total Department of Agriculture workforce. The Soil Conservation Service and Forest Service provide critical assistance to our members throughout the country. The numerous programs under these agencies provide assistance directly to farmers, promote employment in communities that depend on natural resources and outdoor recreation from national forests and conduct vital research to resolve soil and forest problems.

Most of the following organizations have met with Mr. Cason on a number of occasions. We have reviewed his background and qualifications. We believe that his education, knowledge and his extensive experience with agriculture, natural resource and environmental issues make him an outstanding nominee.

We urge your prompt confirmation of Jim Cason as Assistant Secretary for Natural Resources and Environment.

Sincerely,

American Farm Bureau Federation
American Sheep Industries Association
American Soybean Association
Association of National Grasslands
National Cattlemen's Association
National Corn Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Grange
National Pork Producers Council
Public Lands Council

August 4, 1989

The Honorable Patrick J. Leahy
Chairman
Committee on Agriculture, Nutrition
and Forestry
United States Senate
Washington, DC 20510

Dear Chairman Leahy:

We are writing to urge you to schedule hearings promptly in the Senate Agriculture Committee on the nomination of James Cason as Assistant Secretary of Agriculture for Natural Resources and the Environment

As you know, this subcabinet position is an extremely critical one overseeing two major agencies, the U.S. Forest Service and Soil Conservation Service. These two agencies together employ nearly half of the total USDA work force, and play critical roles in helping to manage much of our nation's land, water, forests and other natural resources.

President Bush sent Mr. Cason's nomination to your committee for consideration several months ago. We believe that it is only fair and reasonable that the Senate Agriculture Committee promptly consider Mr. Cason's nomination by quickly holding hearings and then scheduling a vote in committee and on the Senate floor. As Congress and USDA review the many programs under the Forest Service and Soil Conservation Service, it is imperative that the Assistant Secretary be in place to actively participate in that process.

We appreciate your consideration of our request.

Sincerely,

Public Lands Council
National Association of Manufacturers
National Association of Counties
Motorcycle Industry Council
National Forest Products Association
Association of National Grasslands
National Water Resources Association

American Mining Congress
International Snowmobile Industry
American Horse Council
National Inholders Association
American Motorcycle Association
American Forest Council

NWRA



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955 L'ENFANT PLAZA, S.W.; SUITE 1202
WASHINGTON, D.C. 20024-2170
(202) 488-0810

September 25, 1989

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COMMERCIAL
Walter Linzing
FINANCIAL
Stanford G. Ladner
GROUNDWATER
Rodney DeBurr
MUNICIPAL
Kenneth Witt

The Honorable Patrick J. Leahy
Chairman, Senate Agriculture,
Nutrition & Forestry Committee
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the Board of Directors and membership of the National Water Resources Association, I am writing to express our unqualified support for the nomination of Mr. James E. Cason as Assistant Secretary of Agriculture for Natural Resources and Environment.

The National Water Resources Association (NWRA) is a nonprofit federation of state water associations and individuals dedicated to the conservation, enhancement, and efficient management of our Nation's most precious natural resource -- WATER. The NWRA is the oldest and most active national association concerned with water resources policy and development. Its strength is a reflection of the tremendous "grassroots" participation it has generated on virtually every national issue affecting western water conservation, management, and development.

Staff and members of our Association have worked with Mr. Cason on several occasions in his positions with the Department of the Interior. We found him to be sincere, open-minded, and fair on every occasion.

We believe that Mr. Cason's experience will be invaluable to this Administration. Furthermore, he mirrors the views of President Bush on maintaining a balance between protecting our natural resources and future development.

We urge your support of President Bush's nomination of Mr. Cason as Assistant Secretary of Agriculture.

Sincerely,

Thomas F. Donnelly
Executive Vice President

NATIONAL WATER RESOURCES ASSOCIATION



NATIONAL INHOLDERS ASSOCIATION and MULTIPLE-USE LAND ALLIANCE

National Headquarters
P.O. Box 400 • 30 W. Thompson
Sonoma, CA 94965
Phone: (707) 438-1700 • FAX: (707) 438-1706

Executive Office
1000 W. 1st Avenue, Suite 200
Washington, DC 20004
Phone: (202) 638-1000

The Honorable Patrick Leahy
Chairman, Senate Agriculture, Nutrition
and Forestry Committee
U. S. Senate
Washington, D. C. 20510

September 25, 1989

Dear Mr. Chairman:

The National Inholders Association (NIA) and Multiple-Use Land Alliance (MULTA) urge you to support the nomination of James E. Cason as Assistant Secretary of Agriculture for Natural Resources and Environment.

Mr. Cason has demonstrated the necessary qualifications to fill that position and should be confirmed by the Senate.

The National Inholders Association and Multiple-Use Land Alliance represent over 500,000 property owners, recreation permittees, ranchers, water rights owners, miners, and many other types of persons who support recreation on Forest Service lands or hold private equity interests within the boundary of areas managed by the U. S. Forest Service and other federal land management agencies.

To my knowledge, I have never had any professional or business dealings with Mr. Cason. I have carefully examined his resume and discussed his nomination with other knowledgeable organizations and individuals who have. The main concern of NIA/MULTA is that we, as well as all other citizens groups, are fairly able to express our concerns on issues important to the future of recreation, public access and commodity production on Forest Service lands.

We are satisfied that Mr. Cason will be a manager who considers all sides and that we will not be excluded from the process as has happened in the past.

Our expert contacts, both in and out of government, believe that Mr. Cason has the administrative ability and background necessary to carry out the responsibilities essential to be the Assistant Secretary for Natural Resources and Environment. We hope you will support his confirmation.

Sincerely,


Charles S. Cushman
Executive Director



Executive Vice President
North West Timber Association
1355 Oak Street • P.O. Box 5554
Eugene, OR 97405 • 503 686-1603

R. Dennis Hayward

September 25, 1989

Honorable Patrick J. Leahy
United States Senate
433 Russell Building
Washington, DC 20510

Dear Senator Leahy,

I am writing to express strong support of President Bush's nomination of James Cason as Assistant Secretary of Agriculture. The current attack by preservationists against Mr. Cason, misrepresents Mr. Cason's objectivity, honesty and qualifications for the Agriculture position.

The economy of the Northwest, including some 130,000 forest products supported jobs, are currently threatened by law suits and the potential listing of the Northern Spotted Owl as Threatened or Endangered. All government officials in the region, elected or administrative, share a common concern over the human suffering that may result from the listing.

How ironic it is that the national preservationist organizations have launched a campaign to prevent the confirmation of Jim Cason as Assistant Secretary of Agriculture because he expressed such concerns over the impact of a potential owl listing. It would be criminal if such a dedicated, energetic, and knowledgeable individual were denied confirmation on the basis of his concern for balanced resource management.

Secretary Yeutter has gained our respect for his selection of Jim Cason for this key position in the administration. The secretary clearly avoided the opportunity for politically based selections and picked an individual because of his abilities and resource knowledge.

Senator Patrick Leahy
September 25, 1989

Page 2

We at NWTA sincerely urge you to take whatever actions are appropriate to confirm Mr. Cason as Assistant Secretary of Agriculture.

Sincerely,

Dennis

PUBLIC LANDS COUNCIL

"A Western Livestock Public Land User Organization"

Legislative Office:

PATTY McDONALD
Executive Director
Suite 300
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 347-5355

September 22, 1989

Administrative Office:

DAVID G. RICE, JR.
Secretary-Treasurer
220 Livestock Exchange Bldg.
Denver, CO 80218
(303) 298-1112

The Honorable Patrick Leahy
Chairman
Committee on Agriculture, Nutrition, and Forestry
United States Senate
Washington, D. C.

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North Dakota

ROBERT SENNER

Oregon

CHANCEY TAYLOR

South Dakota

JERRY WOOD

Utah

DON HOWARD

Washington

CHAS KAHE

Wyoming

KEN SPALIN

National Cattlemen's Association

JOHN FAULKNER

National Wheat Growers Association

DU WAYNE SLAATHAUG

Association of National Grasslands

Dear Chairman Leahy:

The Public Lands Council supports the nomination and confirmation of Jim Cason as Assistant Secretary of Agriculture for Natural Resources and Environment.

The Public Lands Council represents the 27,000 cattlemen and woolgrowers who graze livestock on public lands, including national forests and grasslands, in the 14 western states. It is also supported by and coordinates the public lands policies of the National Cattlemen's Association, the American Sheep Industry Association and the Association of National Grasslands.

We believe that, seven months after President Bush nominated Mr. Cason to this critical position, it is time for the Committee to act on this nomination. Having worked with Jim as Deputy Assistant Secretary of Land and Minerals Management at the Department of the Interior, and before that as Special Assistant to the Director of the Bureau of Land Management, we appreciate his strong support for and understanding of the need for good, balanced multiple use management and environmental protection on public lands. We have found him to be consistently fair, smart, well-informed and a good manager. In addition, we are impressed with his strong agricultural background.

On behalf of all of our members, we urge you and the Committee to act favorably on Mr. Cason's nomination at the earliest possible date.

Sincerely,

Jim Magagna
Jim Magagna
President

cc: Members of the Committee



April 10, 1989

BARRY M. CULLEN
PRESIDENT
202-463-2710

The Honorable Patrick J. Leahy
Chairman, Senate Agriculture,
Nutrition & Forestry Committee
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The National Forest Products Association (NFPA) wishes to express our strong support for the nomination of Mr. James E. Cason as Assistant Secretary for Natural Resources and Environment with the Department of Agriculture. We believe that Mr. Cason has the necessary qualifications to fill that position and should receive Senate confirmation.

NFPA is a national industry trade association which represents the interests and views of owners and managers of forest lands, manufacturers of forest products, and affiliated regional and product associations. Our membership includes over 750 direct and associated company members, and over 65 association and allied members.

Representatives of our industry met with Mr. Cason when he was associated with the Department of Interior and found him to be fair and impartial in representing the Department's position on matters affecting the forest products industry. His door was always open to us and, we believe, other groups on issues of concern to them. While we were not always satisfied with the final decision, we believe that we did receive a full and fair hearing of our views.

We believe that Mr. Cason has the necessary background and the administrative ability that is required for the position as Assistant Secretary of Agriculture for Natural Resources and Environment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Barry Cullen".

Barry Cullen


AMERICAN PULPWOOD ASSOCIATION INC.

1025 VERMONT AVENUE, NW, SUITE 1020, WASHINGTON, DC 20005
(202) 347-2900

April 26, 1989

The Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

I'm writing on behalf of American Pulpwood Association (APA) members to urge you to support the confirmation of James E. Cason as Assistant Secretary for Natural Resources and Environment (USDA).

The American Pulpwood Association Inc. is a nationwide nonprofit trade association responsible for issues that surround the safe and efficient harvest and transportation of forest products from the woods to the mill. APA members include the nation's pulp and paper mills, wood dealers, independent logging contractors who harvest and transport pulpwood and timber, and equipment companies who manufacture pulpwood and timber harvesting and processing equipment.

The pulp and paper industry and the logging contractors who supply the industry are currently operating under a siege of national, state and local timber harvesting restrictions. Millions of acres of timberland are no longer available for forest management and harvesting due to national forest planning appeals, endangered species listings, wetlands regulations, road and bridge weight limits, etc.

The U.S. needs an Assistant Secretary who can provide a balanced approach to solving these environmental-business forest management conflicts, and we think Jim Cason is a good choice. We hope you will strongly support and expedite his Assistant Secretary confirmation.

Sincerely,

Richard Lewis
Vice President

RL:ff

bc: Shotwell

Scott,
For your information, similar letter sent to each Committee member.

Richard



P.O. Box 6114, Westerville, Ohio 43081-6114

Telephone (614) 891-2425
Telex: 245392; Fax: (614) 891-5012

September 26, 1989

The Honorable Patrick Leahy, Chmn.
Senate Agriculture, Nutrition and
Forestry Committee
433 Russell Senate Office Building
Washington, D.C. 20510-4502

Dear Chairman Leahy:

The American Motorcyclist Association (AMA) is aware that the Committee on Agriculture, Nutrition and Forestry will soon conduct confirmation hearings for the nomination of Mr. James E. Cason as Assistant Secretary for Natural Resources and Environment for the Department of Agriculture. We wish to express our strong support for Mr. Cason and our sincere confidence in his ability to fulfill the responsibilities of that position with integrity and skill.

The AMA is a national organization of enthusiasts that use their motorcycles for transportation and recreation. We represent over 167,000 individual members who have a direct interest in preserving the multiple-use management doctrine which has governed the management of our national forests.

We have had the opportunity to work closely with Mr. Cason during his tenure at the Department of Interior and believe he can successfully transfer that experience and leadership to the position of Assistant Secretary for Natural Resources and Environment. He has demonstrated that he is deliberate and unbiased in the conduct of his responsibilities and fully capable of the administrative challenges offered by this position.

We urge you to affirm Mr. Cason's nomination for the position of Assistant Secretary of Agriculture for Natural Resources and Environment.

Sincerely yours,

Robert Rasor
Vice President
Government Relations

RR/tp

Mr. SMITH. I thank you.

Mr. Chairman, Mr. Cason's detractors have criticized him from time to time for not adhering to their own agenda, which is predictable, given the enormous difficulty and complexity of the job he previously held. Those detractors, I believe, overlook Mr. Cason's support for expanding wilderness areas, placing greater control over recreation areas, expanding the Nation's historic trails, and restricting mining within national parks.

I then would only ask this committee to look at the total record of Mr. Cason at Interior, not just glimpses of it.

I have every confidence in President Bush's decision to nominate him, every confidence in Secretary Yeutter's enthusiasm for him, and every confidence that what I know to be a truly difficult job will be in the hands of one who is no stranger to difficulty. We must accept no less for this position.

Mr. Chairman, I am happy to give Jim Cason my unqualified recommendation for the post of Assistant Secretary of Agriculture for Natural Resources and Environment. And I urge this committee to do the same.

I thank you for the time you have given me, sir.

The CHAIRMAN. Thank you. Thank you very much, Congressman.

As I said earlier, feel free to stay as long as you want, but I also know that you have hearings and meetings on the other side, so feel free to leave if you want.

Mr. SMITH. That is very kind. Thank you.

Senator Lugar, good to see you.

Senator LUGAR. Thank you very much, sir.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM VERMONT

The CHAIRMAN. I want to give every Senator a chance if they want to say something before we get to Mr. Cason. Senator Lugar, I understand you have an opening statement. I would note in putting these hearings together, and they have been somewhat delayed because we, the staff and individual Senators, have gone through a great deal of material. A number of Senators have spoken to me about it. I wanted to make sure that we did all the preliminary work prior to a hearing. And in that, we have carefully made sure that all of the discussions we have had concerning the nominee have remained within this committee, just within the members of the committee and with the nominee.

This has not been a hearing conducted in the press, as well it should not be.

Now, of course, we have the time for the public hearings, and they are important hearings, important to me and important to a lot of Senators on both sides of the aisle.

I expressed serious reservations when the Bush administration announced the nomination of Mr. James Cason for the position of Assistant Secretary of Agriculture for Natural Resources and Environment.

I did that because it is an important area where the decisions by whoever holds that position as Assistant Secretary can affect more land than those of any other Federal official. The lands and forests

under the Assistant Secretary's jurisdiction comprise about three-quarters of the land mass of the United States.

In the 1985 farm bill, American farm policy crossed a threshold. We made a decision in that bill that farm programs have to support and not undermine our environmental goals. Now, we cannot predict the final form of the 1990 farm bill, but it will be my intention to even strengthen the ability of farm programs to support the environmental goals of the whole country.

Quite frankly, I suspect that to get a farm bill passed and to get the votes necessary from those who do not represent a farm constituency, that we may well have to be able to demonstrate that to the satisfaction of our fellow Senators and fellow House Members.

Over the next few years, the Department's conviction and good sense will determine whether the promise of the most important conservation programs enacted in decades will be fulfilled.

I would point out that those programs were enacted with bipartisan support and bipartisan majority and we are at a time when a strong and heightened awareness of the environment is needed in the Department of Agriculture—a spirit of cooperation among all the various interests represented there has to prevail.

Frankly, we do not need a James Watt clone in this position. I normally would not put things on an *ad hominem* basis, but I mention former Secretary Watt because his philosophy on environmental issues was not only quite different certainly than mine, but I think quite different than that of a majority of Senators. I think, also, quite different from that of a majority of Americans, certainly quite different than that of a majority of Vermonters.

We are here to preserve the environment, enhance the environment if we can, and pass it on to the next generation. We are not here to use it all up in this generation for whatever reason.

The Assistant Secretary responsible for the Forest Service and the Soil Conservation Service will face some very serious problems, including sodbuster and swampbuster implementation; ground water protection; the threat of global warming; the controversy over the spotted owl and old-growth forests.

Any one of these issues would be enough to fill a plate of any man or woman who might come into Government. The Assistant Secretary is going to have all of these and many other problems that will need to be dealt with in the upcoming years.

So the person who holds that post needs to be a public steward with, I believe, a conservation ethic and a desire to find balanced solutions to our difficult problems.

And based on the material that was given to me, Mr. Cason, on your background and actions while at the Department of the Interior, I am concerned, and I have expressed those concerns to you personally.

I will state them here for the record so people will understand what they are and also, Mr. Cason, so that you in your testimony will have a chance to respond to them.

You have, of course, no professional training in forest land-use stewardship and no training or experience in soil and water conservation. I imagine you will speak to those points.

It has also been claimed that you have repeatedly advocated positions at the Department of Interior which reduce the returns to the

taxpayer from our Federal resources and undermine sound protection of the environment.

I will put specific questions to you on these issues. And again you will have as much time as you want to respond in any way you see fit.

During these past few months, I have worked in a bipartisan fashion with Senator Lugar, the ranking member on this committee. We have had questions and have tried to raise them together, openly with you. We felt that your record merited a careful and orderly examination that should be conducted in an objective and timely fashion.

We directed our staffs, both the Democrat and Republican staff, to work together to compile your record. They examined hundreds of pages of Department of the Interior documents.

We will have the hearing, and we will go into the issues thoroughly, and then we will have a followup hearing for Senators who might have further questions, and also so that public witnesses, may submit testimony.

I think that all people can feel assured that at the end of these hearings all questions will be asked. The nominee will certainly have an opportunity to answer all questions. I have assured Senators, Democrat and Republican alike, that there will be such a thorough hearing, as I have assured the administration, and there will be.

I yield to the distinguished Senator from Indiana.

[The prepared statements of Chairman Leahy and Senator Conrad follow:]

OPENING STATEMENT OF CHAIRMAN PATRICK LEAHY
FOR THE NOMINATION HEARING OF JAMES E. CASON

I expressed serious reservations when the Bush Administration announced the nomination of Mr. James Cason for the position of Assistant Secretary of Agriculture, Natural Resources and the Environment.

The decisions this Assistant Secretary makes can affect more land than those of any other Federal official. The lands and forests under this Assistant Secretary's jurisdiction comprise almost three quarters of the land mass of the United States.

In the 1985 Farm Bill, American farm policy crossed a threshold. We made a decision that farm programs must support, not undermine our environmental goals.

Over the next few years the Department's conviction and good sense will determine whether the promise of the most important conservation programs enacted in decades will be fulfilled.

We are at a time when a strong and heightened awareness of the environment is needed in the Department of Agriculture - a spirit of cooperation among all interests has to prevail.

We do not need a James Watt clone in this position.

The Assistant Secretary responsible for the Forest Service and the Soil Conservation Service will face very serious problems, including:

- o sodbuster and swampbuster implementation
- o ground water protection
- o the threat of global warming
- o controversy over the spotted owl and old growth forests

These and many other problems will need to be dealt with in the upcoming years.

The person who holds the Assistant Secretary post needs to be a public steward with:

- o a conservation ethic
- o a desire to find balanced solutions to our difficult problems.

Mr. Cason's background and alleged actions while at the Department of the Interior concern me.

Mr. Cason has:

- o no professional training in forest land-use stewardship
- o neither training nor experience in soil and water conservation

It has been alleged that Mr. Cason repeatedly advocated positions at the Department of Interior which:

- o reduce the returns to the taxpayer from our federal resources
- o undermine sound protection of the environment

I directed my staff to review thoroughly Mr. Cason's background, qualifications and record during his tenure at the Department of the Interior.

Over the past few months, I have worked in a bipartisan fashion with Senator Lugar, the ranking member on the Committee. We both felt that the issues and allegations raised about Mr. Cason's record merited a careful and orderly examination. And, we both felt this examination should be conducted in an objective and timely manner.

We directed our staffs to work together to compile Mr. Cason's record. Together, we

have examined hundreds of pages of Department of Interior documents.

This morning we will begin to examine these matters thoroughly. We will continue the hearing on October 3, when Senators may ask follow-up questions, and public witnesses may submit testimony.

Senator Kent Conrad
Statement
Hearing on Nomination of James E. Cason for
Assistant Secretary for Natural Resources and the Environment
September 27, 1989
Committee on Agriculture, Nutrition, and Forestry

I want to thank the Chairman, Patrick Leahy, for calling this hearing.

The position of Assistant Secretary for Natural Resources and the Environment is one of the most important in the United States Department of Agriculture. The person holding that position must have the confidence and trust of both farmers and environmental activists because of the many environmental issues that must be resolved in agriculture. He or she must be able to work out the many complex compromises needed to keep the environment safe and protected without harming farmers economically. Real leadership is needed in this position.

A key question for these hearings is whether or not Mr. Cason has the confidence of those he must work with to resolve many difficult issues.

As with any Presidential appointment, the appointee's qualifications and record in carrying out the public trust must be carefully evaluated. All federal employees have an impact on the public purse by their diligence and care in carrying out the mandate of the public's elected representatives. Mr. Cason has a long record of public service in the employment of the United States Department of Interior. We must carefully and fairly evaluate that record.

Many strong views have been expressed concerning Mr. Cason's nomination. However, this appointment should not be derailed because one group or another is not comfortable with Mr. Cason. I, for one, do not intend to make a decision until I have carefully evaluated the record.

I look forward to the testimony of Mr. Cason and the other witnesses.

Kent Conrad

STATEMENT OF HON. RICHARD G. LUGAR, A U.S. SENATOR FROM INDIANA

Senator LUGAR. Thank you very much, Mr. Chairman. I would confirm that both majority and minority staff have had the opportunity to visit with the nominee, Mr. Cason, at length.

Important questions have been raised with regard to responsibilities of this position as well as his record in public service, and he has responded with a great deal of information that I think has been helpful.

But clearly, this hearing now brings into the public forum these questions and answers, not only from Senators but from members of the public. Each one of us will have to draw judgments from that testimony as well as the copious amounts of information presented on paper that we already have.

I appreciate very much your scheduling this hearing offering ample opportunity for Senators to raise their questions for the nominee, Mr. Cason, to make his positions clear not only to us but to the American people on these vital environmental issues.

I am confident that in the course of these hearings that we will come to a good judgment in the public interest and proceed then on to an examination, in the event our colleagues wish, on the floor of the Senate, of the conclusions that we have reached.

So this record is for our benefit and for theirs, and perhaps even more importantly in the public interest. I thank you again for scheduling the hearing.

The CHAIRMAN. Thank you very much. Senator Cochran.

STATEMENT OF HON. THAD COCHRAN, A U.S. SENATOR FROM MISSISSIPPI

Senator COCHRAN. Mr. Chairman, let me just say that I too want to thank you for turning to the consideration of this nomination. There had been an opportunity for all of us, I suppose, to try to figure out what all the fuss was about when the nomination seemed to attract a lot of attention, some letters pro and con about the wisdom of nominating Mr. Cason for this position.

I have been impressed, I will have to say to the chairman, with the commitment of support from the Secretary of Agriculture and from the President for this Secretary-designate.

I have to start off, I suppose, if there is a bias, in support of the nominee. But I am concerned about the expressions of opposition that we are receiving, and I am anxious to try to find out whether those expressions are based on fact or suppositions that may not be supported by the facts.

I have had an opportunity to visit with the nominee, and I think there is a genuine concern on his part to discharge these responsibilities of this office in a way that would be consistent with interests in the environment, concerns for protecting soil and water and our great natural resources throughout this country.

So I am hoping that the hearing will be one designed to get at the facts so that we will know what the facts really are, and may we try to guard against turning it into anything other than that. Now, I am not suggesting that anybody would want to do that, but

I look forward to hearing the testimony, and I appreciate very much, Mr. Chairman, your calling the hearing.

The CHAIRMAN. Thank you, Senator Cochran. Senator Boschwitz.

STATEMENT OF HON. RUDY BOSCHWITZ, A U.S. SENATOR FROM MINNESOTA

Senator BOSCHWITZ. Thanks, Mr. Chairman. Like the other members of the committee, I come with a great deal of interest today.

Since Mr. Cason's nomination was announced by the administration, I have heard a good deal, not only from his supporters but also from his detractors. I look forward to the hearings and developing a broader opinion.

In general, I believe the President should have broad discretion in choosing those who will serve his administration. So like my friend from Mississippi, I come here with a predilection to support the President's nominee.

Having said that, I will not take lightly the many concerns that those in the environmental community have raised. I have met with them both here in Washington and also in my State of Minnesota.

The underlying questions are important. Can Mr. Cason strike a proper balance in his oversight of our forest and soil conservation efforts? I share concerns on some of the issues that you mentioned, Mr. Chairman, of global warming and clean water. Will Mr. Cason work to see that our natural resources are used wisely and our environment is protected? Will he be able to work with differences in opposing constituencies?

Frankly, the last administration did not have a very strong record in this area. The President did not make environmental concerns a high priority, and so those environmental concerns have suffered.

This administration has set a new course. This year it sent the clean air bill to the Congress. It is the first time an administration has done that in a dozen years. Many of the President's appointments, in my judgment, including the choice of William Reilly to head the EPA, have been widely applauded as showing a new sensitivity to environmental issues.

This hearing will help us determine whether or not Mr. Cason shares this administration's renewed commitment to the environment and whether he recognizes the shortcomings of the previous administration in which he served.

Some fear that even if he is confirmed that Mr. Cason will not be able to serve effectively given the controversy that surrounds his nomination, and in that regard I disagree.

I am reminded of the opposition surrounding the nomination of Wally Hickel, the Secretary of Interior during the Nixon days—the former Governor of Alaska. He had a prodevelopment reputation. The environmental community delayed his confirmation so that he became the last member of the Cabinet to be confirmed.

When he was confirmed, however, he silenced many of his critics, and while Secretary he did many things that established broad environmental credentials.

So the Assistant Secretary for Natural Resources, as you mentioned, Mr. Chairman, is a very sensitive post. It requires somebody who has a sound approach on the issues of resource use and environmental protection. It requires somebody who is willing to work with all interested parties to resolve the problems.

During this confirmation process, we will determine whether or not Mr. Cason has those qualifications, and I look forward to listening to the witness.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Senator Bond.

**STATEMENT OF HON. CHRISTOPHER S. "KIT" BOND, A U.S.
SENATOR FROM MISSOURI**

Senator BOND. Mr. Chairman, my sincere thanks for your willingness to hold this hearing. I believe we are going to have a long day, and I am not going to lengthen it any further with introductory comments other than to note that Mr. Cason is here as the nominee of our President. He does have the strong support of the Secretary of Agriculture, and I think the judgment of both of those officials is entitled to a great deal of weight.

We have heard from Congressman Smith and he shared with us the list of people and organizations who support him. You have indicated that there are those who oppose him. I am fully confident that the best way we can resolve this is to give the nominee the opportunity to address the questions—tough as they should be—searching and exploring to find out where he really stands.

I think that this opportunity, along with the hearing to be held next week, should allow all of us to resolve those questions, and I just appreciate the fact that we are able to get on with the job.

The CHAIRMAN. Senator Gorton.

**STATEMENT OF HON. SLADE GORTON, A U.S. SENATOR FROM
WASHINGTON**

Senator GORTON. Thank you, Mr. Chairman. I am pleased that you and the committee have scheduled today's hearing on the Cason nomination.

I can't stress strongly enough to this committee the vital importance to which this position holds to the Pacific Northwest. With the charge of the Assistant Secretary for Natural Resources and Environment to oversee the programs of the U.S. Forest Service and the Soil Conservation Service comes the responsibility to oversee two important agencies to my home State of Washington.

Our State's economy is deeply involved with both agriculture and timber production. Our people also demand high standards of environmental quality.

As many members of this committee realize, we are facing a serious crisis in our region over the use of our national forests. We need leadership, and we need this position to be filled with someone who will provide that leadership.

It is this Senator's belief that while leadership is vital and timely consideration of this position is critical, it is most important that this position be filled by the right person.

The position demands a thoughtful steward to oversee some of our Nation's finest natural resources. The Nation also requires a thoughtful leader to oversee the Department of Agriculture's Soil Conservation Service.

I would state that I am deeply concerned by a number of serious questions raised with regard to this nomination. This set of hearings is designed to answer those questions one way or the other.

I am deeply interested in the Federal Government's responsibility for national leadership with respect to our environment. I am convinced that sound management of our national forests and management of soil and water conservation programs together with environmental leadership are all meant to be compatible. This nomination is particularly important in that connection.

I want to thank you, Mr. Chairman. I look forward to working with the committee in completing consideration of this nomination. With the hearing today, we may all begin thoughtful and objective examination of the administration's nominee.

The CHAIRMAN. Mr. Cason, now that you have had a chance to be eulogized, if you would stand, please, and let me swear you in.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth so help you God?

Mr. CASON. Yes, sir, Mr. Chairman.

The CHAIRMAN. I understand you have an opening statement.

Mr. CASON. Yes, sir, Mr. Chairman.

The CHAIRMAN. Go ahead.

Mr. CASON. Could it be entered into the record in its entirety?

The CHAIRMAN. Of course.

Mr. CASON. Thank you.

TESTIMONY OF JAMES E. CASON, NOMINATED TO BE ASSISTANT SECRETARY OF AGRICULTURE FOR NATURAL RESOURCES AND ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE

Mr. CASON. In the interest of time, I will cut my oral remarks down, too.

Mr. Chairman, Senator Lugar, members of the committee, I am deeply honored by the nomination of President Bush to become the Assistant Secretary of Agriculture for Natural Resources and Environment.

I am pleased and grateful to have the support and confidence of Secretary Yeutter. With Secretary Yeutter and the help of this committee, I hope to be able to address, if confirmed, some of the difficult public policy issues that we have in the future, many of which were mentioned during the opening statements.

I have had some past experiences which I believe gives me a sense of understanding and appreciation for the difficulty of administering some of the statutory mandates that the Department of Agriculture will have. As a Deputy Assistant Secretary for Land and Minerals Management at the Department of Interior, we had a similar kind of atmosphere that we had to administer a number of complex, controversial, difficult statutes.

As the Deputy Assistant Secretary, we had some land management responsibility for 700 million acres in the Continental United States and approximately 2 billion acres of the Outer Continental Shelf.

If confirmed, I would work with this committee and other organizations, constituency groups, Department of Justice and other folks to be able to do the best job possible to address the difficult public policy issues we have.

I will maintain an open door policy as we have in the past. Any group who wants to come in the door and visit about any issue that's of concern to them will be welcome.

I found the experience at the Department of Interior to be helpful. I understand that the missions, goals, objectives and initiatives at the Department of Agriculture will be different. But a lot of the processes and the procedures will be the same.

I believe I have a keen appreciation for the American farmer. I have had the opportunity during my youth to spend a number of years in the agriculture as a migrant farm family worker where we traveled the fruit and vegetable circuits of the west coast.

Working side-by-side with farmers all across the country, I had the opportunity to see the intense dedication to land that many farmers share, and sometimes were able to witness the difficulty they have in making ends meet and sometimes just survive. I would like the opportunity again to assist farmers all over the country, this time in a different capacity.

Though I have had a fair amount of experience in managing a large government program administering land use programs set by Congress, I realize I still have a lot to learn. I have attempted to begin that process by reaching out to the constituency groups of the Department of Agriculture and begin to learn from them what is concerned to them, what their interests are and what input they would have on USDA policies.

I understand, Mr. Chairman, Senator Lugar, members of the committee, that there are a tremendous number of programs included in the Forest Service and the Soil Conservation Service that are very important and have the potential for giving tremendous amounts of environmental benefits and economic prosperity benefits to the American people.

If confirmed, I would work with Secretary Yeutter, the members of the administration, the members of this committee and others to try and do as good a job as possible of weighing the needs of the future against the needs of today and trying to balance the needs of the people today and their impact on the environment.

Mr. Chairman, I thank you and Senator Lugar for the fairness that you have demonstrated in the investigation. I realize that there have been some concerns, and I appreciate the thoroughness with which you have gone through this process, and I look forward to an opportunity to discuss any of the issues.

I would be happy to answer your questions at this time.

[The prepared statement, biographical information (public), attachment 1, financial data and conflict of interest (public), financial disclosure report, and responses to questions of Mr. Cason follow:]

PREPARED STATEMENT OF JAMES E. CASON, NOMINATED TO BE ASSISTANT SECRETARY OF AGRICULTURE FOR NATURAL RESOURCES AND ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman, Senator Lugar, members of the committee, I am deeply honored by the nomination of President Bush to become the Assistant Secretary of Agriculture for Natural Resources and Environment.

I am also pleased to have the confidence and support of Secretary Yeutter. If confirmed, I look forward to working jointly with Secretary Yeutter and this committee with an enthusiastic spirit of cooperation and open communications.

I have had some past experiences which provide a foundation for an appreciation and understanding of the challenges and importance of this new assignment. As the principal Deputy Assistant Secretary for Land and Minerals Management at the Department of the Interior, I shared responsibility for the management of programs impacting over 700 million acres of the Continental United States and approximately 2 billion acres of the Outer Continental Shelf (OCS).

With a staff of over 12,000 located in about 300 offices nationwide, we carried out congressional mandates ranging from environmental preservation to full resource development.

These programs have spanned a host of functions similar to those in the Department of Agriculture.

If confirmed Mr. Chairman, I will work with each member of this committee to address difficult public policy issues. I pledge to you that I will maintain an open door policy that will result in the development of constructive communication channels with all of the constituency groups of the Department of Agriculture.

My work, with the Department of the Interior, has given me a foundation of knowledge and experience which would be very helpful in managing the programs I would be responsible for at the Department of Agriculture. Though it is clear that the missions, objectives, initiatives and policies of the USDA will present some differences, the process and working requirements are very similar.

College summers were spent in the woods, as a resident fireman for the U.S. Forest Service or in a management capacity with a forestry youth camp. In addition to fighting forest fires, working in the forests of Oregon provided wonderful exposure to fish and wildlife resources, the care of trees, and adventures in outdoor recreation.

I also developed a keen appreciation for the American farmer at a very young age. As a member of a migrant farm family who traveled the fruit and vegetable circuit of the west coast, my life and that of my parents has centered around agriculture and ranching. Harvesting crops was the predominate activity of our family for a number of years.

Working side by side with farmers for several years, I saw first hand the intense dedication to the land farmers share and the tremendous effort all farmers must make to prosper, or sometimes, just to survive. I would appreciate an opportunity to assist farmers all over this country, again, this time in a new capacity.

Though I have had a considerable amount of experience that will be useful, I recognize that I have a great deal yet to learn. To begin the process of fostering relationships with new constituent groups and to improve my knowledge of the programs, I have dedicated many hours to communicating with those individuals who have expressed an interest in discussing USDA programs or policies.

Mr. Chairman, members of the committee, there are many important program areas administered by the U.S. Forest Service and the Soil Conservation Service that promise wonderful benefits to the environment and to people.

If confirmed, and given the opportunity to serve with Secretary Yeutter, I would enthusiastically contribute my efforts toward defining the goals and objectives that weigh the needs of the future as heavily as the problems of today and which balance the needs of people against their impacts on the environment.

Chairman Leahy and Senator Lugar thank you for allowing me to appear before your committee. I look forward to our working with each member of the committee on the many tasks involving the agricultural, natural resource and conservation sectors. I would be pleased to answer any questions you may have.

BIOGRAPHICAL INFORMATION (PUBLIC)

Question 1: Full name (include any former names used).

Answer: James Edwin Cason

Question 2: Address: List current place of residence and office address(es). List all office and home telephone numbers where you can be reached.

Answer: Residence:
7431 Carol Lane (703) 876-9276
Falls Church, VA 22042

Office
U.S. Department of the Interior (202) 343-2191
18th and C Streets, N.W. Room 6610
Washington, D.C. 20240

Question 3: Date and place of birth.

Answer: July 16, 1954 - Athens, Texas

Question 4: Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Answer: Divorced from Ernette Barreira Cason, December 30, 1983.

Question 5: Education: List each college and graduate or professional school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Answer: Pacific University, Forest Grove, Oregon 97116
August 1972 - May 1976
B.A.- Business Administration May 1976

Question 6: Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college; include a title and brief job description.

Answer: Please see Attachment 1.

Question 7: Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Answer: None

Question 8: Government Service: State (chronologically) your government service or public offices you have held, including the terms of service grade levels and whether such positions were elected or appointed.

Answer:	2/89 to Present	Acting Assistant Secretary-Land and Minerals Management, Office of the Secretary, Washington, D.C. ES-301, \$80,700 PA
	10/85 - 2/89	Principal Deputy Assistant Secretary-Land and Minerals Management, Office of the Secretary, Washington, D.C., ES-301, \$80,700 PA
	09/85 - 10/85	Special Assistant to the Director, Bureau of Land Management, Washington, D.C. ES-301, \$61,296 PA
	12/83 - 09/85	Special Program Liaison, Office of the Associate Director, Bureau of Land Management, Washington, D.C., GM-301-15, \$54,004 PA
	10/82 - 12/83	Special Program Liaison, Office of the Associate Director, Bureau of Land Management, Washington, D.C., GM-301-14, \$42,500 PA

Question 9: Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you received and believe would be of interest to the Committee.

Answer:	Special Achievement Award:	11-16-88, \$10,000
	Special Achievement Award:	01-16-87, \$2,500
	Group Award :	06-14-85, \$9,500 (Shared by 6 recipients)
	PMRS Performance Award:	03-31-85, \$1,010
	Graduated Magna Cum Laude	

Question 10: Other Memberships: List all organizations to which you belong, excluding religious organizations.

Answer: None

Question 11: Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published materials (including published speeches) you have received. Please include on this list published materials on which you are listed as the principal editor. It would be helpful to the Committee if you could provide one copy of all published material that may not be readily available. Also, the maximum extent practicable, please supply a copy of all unpublished speeches you made during the past five years on issues involving agriculture, nutrition, forestry or commodity futures policy or related matters.

Answer: I prefer to speak extemporaneously; therefore, I do not prepare nor retain unpublished speeches. My recollection is that there have been a couple of isolated incidents where DOI staff have prepared papers which were offered to meeting participants, but I have no record of these situations. I have asked the public affairs offices of the Bureau of Land Management, Minerals Management Service, and the Office of Surface Mining Reclamation and Enforcement for any papers released under my name and have included the only one that was provided. Further, I am providing copies of newspaper editorials that have appeared under my name.

Other documents upon which I have worked include (though none were formally published in the traditional sense of the word):

- Applied/Violator System Task Force Report
Department of the Interior 1985
- The Royalty Management Program - A Management Oriented Post Implementation Review
Department of the Interior 1985
- Timber Resources Environmental Evaluation - Idaho
Western Environmental Trade Association 1977
- The Writ of Review in Oregon
Western Environmental Trade Association 1977
- Timber Resources Environmental Evaluation - Oregon
Western Environmental Trade Association 1976

Question 12: Health: What is your state of health?

Answer: Excellent.

Attachment 1

5/2/89

JAMES E. CASON
7431 Carol Lane
Falls Church, Virginia 22042
(703) 876-9276 (Home)
(202) 343-2191 (Work)

PROFESSIONAL EXPERIENCE

U.S. Department of Interior (DOI)
Washington D.C.

1985 - Present

Principal Deputy Assistant Secretary
Land and Minerals Management

Advise the Secretary of the Interior on land and natural resource issues (oil and gas operations, coal mining, timber harvesting, grazing, recreation, and land acquisition/disposal) arising from management responsibility for 700 million acres onshore, two billion acres offshore (Exclusive Economic Zone) and all coal mining in the United States. Represent the Secretary of the Interior on appropriate issues of interest to the White House and the Congress.

Develop legislative proposals to establish, amend, veto or repeal statutes affecting land and natural resources. Consult with all branches of the Federal government as well as State and local governments in formulating and implementing policy decisions.

Establish policy, goals and objectives for the Bureau of Land Management, Minerals Management Service, and the Office of Surface Mining. Supervise 13,000 employees nationwide in nearly 300 locations; hire and evaluate senior management personnel. Prepare, defend and implement annual budgets exceeding \$1 billion. Administer the receipt, accounting and distribution of annual Federal income exceeding \$5 billion.

Work with the DOI Solicitor's office, Department of Justice and private attorneys on regulations, enforcement actions, litigation defense strategy and settlement proposals. Mediate disputes among Congress, States, Indian tribes, industry, utilities and the Executive Branch involving oil, gas and coal product value regulations. Negotiate issues between the Federal government and private parties to settle or avoid litigation involving royalty disputes, penalties, contract payments and trespass.

Testify before several House and Senate Committees. Prepare and deliver speeches to constituent groups throughout the country.

Special Assistant to the Director
Bureau of Land Management

1982 - 1985

Advised the Director, Assistant Secretary for Land and Minerals Management and the Secretary of the Interior on natural resource issues associated with management of 350 million acres of fee estate plus 350 million acres of subsurface minerals. Assisted senior management in formulating and implementing Bureau budgets, policy positions and program decisions.

Supervised development of a \$250 million computer system designed to automate the Federal government's one billion land records. Conducted extensive Post Implementation Evaluation of Minerals Management Service's automated systems for the Assistant Secretary and Congress. Developed system specifications for \$10 million computer system to implement provisions of the Surface Mining Control and Reclamation Act.

Fred Meyer, Inc.
Portland, Oregon

1981 - 1982

Operations Manager

Supervised 30 employees in multi-million dollar retail outlet. Responsible for facility operations, cash control, inventory control, planning and promotions, and customer complaints.

ACM Real Estate, Inc.
Portland, Oregon

1979 - 1981

Partner/ Office Manager/Salesman

Managed office of Broker and 10 salesmen specializing in commercial/industrial real estate. Identified properties, conducted records research, developed marketing proposals and closed sales.

Committee to Elect Lynn Engdahl
Portland, Oregon

1979 - 1980

Campaign Manager

Directed all campaign functions including: volunteers, staff, press, budgeting, financial records and FEC reports, demographic studies, and fundraising. Surrogate speaker for candidate. Developed Congressional candidate's position papers.

Cascade Overview Development Enterprises, Inc.
Portland, Oregon

1978 - 1979

Vice President

On-site manager (Tehran/Sari, Iran) for \$1 billion project involving construction of 5,000 homes in a planned unit development near the Caspian Sea; handled contract negotiations with businesses in five nations; established administrative and sales offices in Iran; responsible for financial management, budgeting, sales promotions and employee supervision. Project terminated prematurely due to internal revolution.

Western Environmental Trade Association
Portland, Oregon

1976 - 1978

Project Manager

Conducted exhaustive research into land and natural resource issues in response to preservation groups. Issues included: nuclear energy; land use planning; wilderness; timber withdrawals; herbicides, etc. Authored three studies: The Writ of Review; Oregon TREE; and, Idaho TREE. Extensive public speaking and lobbying throughout the Pacific Northwest.

EDUCATION

Business Administration (B.A.)
Pacific University, Oregon
Magna Cum Laude

1976

Real Estate Law, Practice and Finance
Professional Careers, Inc.

1979

No One Plans To Mine In The Parks *Cason* *Bin*

Public Is Being Misled About Intent Of Interior Department Proposal

By James E. Cason

The Interior Department recently proposed a fair method to define the valid rights that owners of private property have in areas protected by law from surface coal mining. Bracketed with that proposal is the department's policy for protecting the national park system.

A *Post-Dispatch* editorial recently raised the specter of parks, wildlife refuges, historic sites and wilderness areas jeopardized by mining. Paraphrasing President Reagan, "There you go again."

In a nutshell, there will be no mining on national park land, period. But within the boundaries of the parks are "islands" of private property. These areas have become the subject of controversy, as some landowners have sought mining permits.

Thus, Congress has had to address two concerns simultaneously: preventing mining on these lands and protecting the rights of private landowners.

In the 1977 Surface Mining Control and Reclamation Act, Congress attempted to address the question of "valid existing rights." The statute has left it to the Interior Department to work out the criteria.

The first step in doing so was openly proposing the new rule as part of a formal rule-making process that involves maximum public participation. Anyone, including a newspaper, can send in comments and testify at public hearings.

People interested in the process, however, should read what the Interior Department actually proposed, not just what newspapers printed. The issue is not mining in the parks. The issue is how to determine whether valid rights exist in specially protected areas; who makes the determination; and — when an intent to mine appears imminent — the department's policy of blocking the use of those private property rights while providing fair compensation through exchange, purchase or condemnation.

Congress wisely did not legislate a

massive buy-out of all coal property inside park boundaries. That would be too expensive. It would also be unnecessary. Many coal deposits can never be mined profitably. Why should owners of unmineable deposits get paid just because their land is in a protected area?

Where the privately owned coal is commercially valuable, the Interior Department is proposing two options.

One is based on good-faith efforts by landowners to get all required mining permits of the date the land got protected status. The other is based on ownership plus the right of the landowner,

proposed rule on the subject of valid existing rights.

Under the department's park-protection policy, anyone with valid existing rights who demonstrates an intent to mine on park land or similarly protected areas will have to negotiate sales or exchanges with the appropriate land-managing agencies. If necessary, the National Park Service or other appropriate authority can take coal property by condemnation, leaving the issue of fair compensation to be worked out later.

To boost the Park Service's acquisition power, the Interior Department last year formally proposed a new U.S. law expanding federal authority to acquire coal land within park boundaries by interstate exchange for government coal deposits outside park areas. Current authority is limited to within-state exchanges.

Clarifying this issue will not only let the landowners affected know where they stand. It will also help the Park Service set its future land acquisition agenda in places like the New River Gorge National River in West Virginia.

National park areas comprise only a small percentage of federal land. They contain an even smaller percentage of the nation's coal resources.

Moreover, coal-bearing lands represent a minuscule portion of the National Park System. Nevertheless, it is important to rule out coal mining anywhere within the national parks, and to do so without abridging constitutionally protected property rights of individuals. The proposed rule makes that abundantly clear.

As part of the valid existing-rights proposal, the Interior Department is requesting public comments also on whether prohibitions against surface coal mining in specially protected areas are to apply to subsidence, the phenomenon of sinking or shifting ground over underground coal mines.

James E. Cason is the deputy assistant secretary for land minerals management, U.S. Department of the Interior, Washington.



under state law, to use the particular mining method intended, as of the date the land gained protected status.

Why state law? Because in the United States, state laws and state legal decisions — not federal — govern private property rights.

The U.S. Supreme Court upheld Pennsylvania's law requiring half the coal in underground mines to be left in place as support for the surface. Kentucky's new state constitutional amendment limiting broad-form coal deeds presumably would also be upheld. Both examples show how state laws affect valid existing coal rights. They both illustrate why the department made state law part of its

Oil shale leasing follows the law

U.S. REP. Ben Nighthorse Campbell's Jan. 3 article, "Hodel gives away oil shale lands," was misleading in its discussion of the Interior Department's recent proposal to resume the processing of pending oil shale patent applications under existing federal laws.

Campbell's contention that the Department of the Interior is "giving away" these lands for \$2.50 an acre is incorrect. The Mining Law of 1872 requires the United States to grant title to a claimant for \$2.50 an acre, when the claimant demonstrated the discovery of a valuable mineral deposit and otherwise complies with the requirements of the law. Although the Mineral Leasing Act of 1920 precluded staking new oil shale mining claims, the act did permit pre-1920 claims to be patented if the claims are maintained in compliance with the Mining Law.

After 68 years, the U.S. Congress has not changed either the Mining Law or the Mineral Leasing Act with respect to oil shale claims. It is difficult to comprehend, therefore, how the Department of the Interior could be "ignoring public protests and the will of Congress" by obeying these laws. The Department of the Interior is obligated to obey the laws as they actually exist, not as Campbell wishes them to be.

Campbell also alludes to the desirability of various leasing laws and how they solve many perceived public-policy problems. The leasing laws of the past 12 years have made it increasingly difficult to operate in the energy and minerals industry. Any existing and even increased production during that time has come from leases obtained prior to that time. Further, the Mineral Leasing act has offered claimants the opportunity to convert their oil shale claims to leases for almost 70 years, yet no claimant has ever viewed this option as attractive. This fact suggests that increasingly more complex leasing laws are not the way to increase the availability of energy or minerals resources in the future.

Finally, while Campbell sees the recent legislative process as a possible source of hope, I find yet great-

by JAMES
CASON

er despair. The Department of the Interior worked with Congress for months to try to achieve a compromise resolution to the oil shale issue. When a congressional moratorium expired last March, the department imposed its own moratorium in the hope of reaching a consensus legislatively. We proposed legislation. We sponsored meetings and exchanges of ideas among all parties, including state governments, industry, and members of Congress. All of that was for naught.

When the 100th Congress had ended, we made a deliberate assessment of what had been accomplished and what could be done. Absent congressional action, the Department of the Interior has a legal obligation to process pending patent applications in Utah and Colorado, including verifying whether the approximately 340 claims in question meet the test of discovery of a valuable mineral deposit within the meaning of the mining laws, and whether such claimants have complied substantially with the assessment work requirements.

Our standards for both determinations are consistent with existing laws as upheld by the Supreme Court of the United States. Once again, as has happened many times throughout the tortuous history of this subject, we concluded that the appropriate course of action was to honor the rights of the citizens involved. We will continue to obey the law as it is currently written and interpreted by the Supreme Court until Congress enacts other legislation.

James E. Cason is assistant secretary of land and minerals management for the U.S. Department of the Interior.

PAGE 1

Speech for Assistant Secretary Cason

Presented to the National Association of State Departments of Agriculture

- Thank you for inviting me here to speak to you.
- Secretary Lujan was unavailable...
- Secretary has a strong background and familiarity with Interior issues:
 - A. Westerner from New Mexico.
 - B. Served 20 years on House Interior Committee, including 4-years as ranking Republican member.
 - C. Secretary brings to the Department a profound commitment to the Country's land and its resources.
 - D. In addition, he is committed to our human resources.
- Secretary brings new theme to guide the Department:
 - A. Developed by Secretary and President (refer to handout)
 - B. STEWARDSHIP— a 10-point Agenda
 1. S—stands for Stewardship; being good stewards.
 2. T—Territories--We will work with the leaders of the Territories to enhance the political, economic and social development of their peoples.
 3. E—Education—the Secretary is dedicated to increasing the public's knowledge, appreciation, and support of natural resource policies. Long-range plan—using Departmental resources to revitalize education system.
 4. W--War on Drugs-- We will increase our cooperative efforts with State and local authorities; provide a drug-free workplace; encourage treatment for drug users.
 5. A—America the Beautiful—We will strengthen and preserve National Parks, Wildlife Refuges and Wilderness Areas.

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6. R—Responsible, Efficient and Ethical Management—
We will manage in a fiscally responsible and ethical manner. The Secretary has placed a high priority on EEO. Commitment to women, minorities.
7. D—Domestic Resources—We will manage multiple-use lands in a combination of ways that best serves the American people.
8. S—Science and Technology—We will be aggressive in helping solve national, international problems; e.g. global climate change, acid rain.
9. H—Harmony—Spirit of harmony; Coordination, not confrontation. "Kinder, gentler Nation."
10. I—Indian Tribes and Alaska Native Groups— We are committed to making self-determination, self-government a reality.
11. P—Partnerships—We will promote partnerships with you, other state and local agencies, and public and private groups. Volunteers; "Thousand Points of Light."

- With this agenda in mind, here are some of the issues and priorities facing the Department.

- Arctic National Wildlife Refuge (ANWR)

- A. This issue fits under Secretary's Domestic Resources, Stewardship.
- B. The President has made clear we can't ignore resource potential of this area because of National security and the economic impacts of energy needs.
- C. Agriculture is a petroleum-dependent sector of the economy: Farmers need fuel to operate equipment and transport crops. Even pesticides are petroleum-based.
- D. A pipeline, 60 miles away from ANWR, carries 1/4 of the Nation's domestic oil.
- E. The major fields that supply this pipeline will be nearly depleted in a decade.

PAGE 3

- F. ANWR has the potential to be as big as Prudhoe Bay.
- G. We are committed to exploring this area with minimal disruption to wildlife, other resources.
- H. No permanent environmental damage.
- I. We are confident we can negotiate a decision and reach a consensus among various interests.

- Offshore Oil and Gas Leasing

- A. This issue fits under Secretary's Domestic Resources, Stewardship.
- B. The OCS Lands Act requires the Department to make offshore resources available, while protecting coastal, human, and marine environments.
- C. Federal offshore leases currently supply 1/4 of U.S. production of natural gas and 1/8 of oil.
- D. This contributes to national security and economic strength.
- E. Offsets costly energy imports and more expensive alternatives.
- F. Of 2.2 billion barrels of OCS oil produced from 1982-1987, fewer than 2,100 barrels were spilled.
- G. The OCS program involves substantial State participation and consultation at many stages.
- H. Noncoastal states have a significant stake in the OCS leasing program. Resources belong to all Americans.

- Forestry

- A. Forestry is an important domestic resource.
- B. 90 million acres of lands managed by BLM are forested.
- C. Most in Alaska.
- D. 26 million acres in lower 48 states.
- E. Secretary supports O&C payments.
- F. O&C payments are important economically to communities.

- Grazing

- A. The Federal rangelands provide an important Domestic Resource.
- B. Nearly 19,000 ranchers, farmers graze livestock on BLM lands.

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- C. About 90 percent of permittees run small or medium operations; many are family-owned, providing sole source of income.
- D. In 1975, only 17 percent of the rangeland was in excellent or good condition. In 1987, it was improved to 33 percent. In 1975, 33 percent was in poor condition; in 1985, only 19 percent was in poor condition.
- E. We are committed to continuing to work closely with permittees. Together, rangelands can continue to show improvements.
- F. Court decision on the grazing fee process last year was a bright spot for multiple-use management.
- G. The ruling upheld authority of the Secretaries of Interior and Agriculture to set grazing fees by President's Executive Order.
- H. It also affirmed our view of fair market value.
- I. We've held all along that FLPMA did not repeal the Taylor Grazing Act.
- J. Another bright spot has been the completion and issuance of BLM's final Grazing Administration Regulations, after years of work.
- K. These regs provide a businesslike foundation for managing this important activity on public lands.
- L. The regs allow us to combine flexibility with protection of other resources; grazing can remain compatible and, in fact, enhance other multiple use of public lands.

- Environmentally Sensitive Issues

- A. The Secretary has expressed his commitment to preserving our natural heritage—harvesting resources and protecting the environment is not an either/or question. We can do both.

- B. Wetlands

- 1. The President and Secretary are committed to no net-loss of wetlands.
 - 2. A concerted, diligent effort is required to maintain, restore and increase the productivity of wetlands.
 - 3. Protection and management cuts across all jurisdictional boundaries: Federal agencies, state fish and wildlife agencies and private citizens and groups must work cooperatively.

- C. Wildlife

- 1. We are working on the rangewide recovery of desert bighorn sheep in a 6-state area.
 - 2. We will pursue cooperative initiatives with state and agencies to accomplish this.

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3. We are also strengthening our fisheries habitat program through better inventory, monitoring, research and habitat acquisition.

4. This area gives us another opportunity to increase partnerships with state and local agencies and private groups.

D. Wildlife and Wetlands are but 2 areas in which the Department is committed to protecting our resources and heritage.

1. We are also committed to protecting cultural and archaeological resources, providing recreational opportunities and creating and managing Wilderness Areas, Scenic Areas, etc.

• Land Information System

A. The BLM is developing an automated Land Information System that, when implemented in the early 1990s, will tie BLM's extensive mineral records and natural resource data precisely to legal descriptions for BLM lands.

B. To put this in perspective, BLM manages 1/3 of the land and minerals in the United States. BLM's records form the basis for many decisions that can affect private landowners, state and local governments.

C. LIS will allow BLM to develop better land use plans in coordination with State and other agencies.

D. As a result, we will be able to determine how a decision to change livestock grazing use or issue a mineral lease on BLM lands can affect nearby private or state agricultural lands.

E. Land and resource conflicts on federal, state and private lands can be minimized.

F. LIS will also help State governments to obtain BLM land and mineral information at the touch of a button. This information can then be linked with the States' own land and resource data. As a result, States will be able to more effectively manage their own resources.

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- Firefighting in the Wildland/Urban Interface

- A. The crisis of wildland fire is spreading nationwide.

- B. As part of DOI's commitment to responsible and ethical management, DOI is currently working with numerous other federal, state and local agencies and private industry to meet protection needs for both public lands and private property.

- C. Between 1985 and 87, wildland fires devastated 17,000 square miles throughout the country; an area the size of Vermont and New Hampshire combined. More than 2,500 homes and other buildings were destroyed, a loss of more than \$60 million.

- D. Reason: Not just recent dry weather conditions— but firefighters having to turn away from wildland fires to protect lives and property.

- E. DOI fire mission is to protect public land resources.

- F. Increasing numbers of people live near and/or use the public lands, and lives and property are threatened by wildland fires.

- G. We will continue to strengthen our partnerships with state and local agencies and private landowners to better protect both public and private resources.

- In closing, we look forward to meeting the challenges ahead.
- Stewardship is not just a theme; it is an attitude.
- Together, we can help achieve the President's vision of a strong, prosperous and healthy America.
- Any questions?

FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

Question 1: Have you severed all connections with your immediate past private sector employers, business firms, associations, and/or organizations?

Answer: Yes

Question 2: List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, incompleting contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

Answer: None

Question 3: Do you, or does any partnership or closely held corporation in which you have an interest, own or operate a farm or ranch? (If yes, please give a brief description including location, size and type of operation.)

Answer: No

Question 4: Have you, or any partnership or closely held corporation in which you have an interest, ever participated in Federal commodity price support programs? (If yes, provide all details including amounts of direct government payments and loans received or forfeited by crop and farm, etc. during the past five years.)

Answer: No

Question 5: Have you, or any partnership or closely held corporation in which you have an interest, even received a direct or guaranteed loan from or cosigned a note to the Farmers Home Administration? (If yes, give details of any such loan activity during the past five years.)

Answer: No

Question 6: Have you, or any partnership or closely held corporation in which you have an interest, even received payments for crop losses from the Federal Crop Insurance program? (If yes, give details.)

Answer: No

Question 7: If confirmed, do you have any plans, commitments, or agreements to pursue outside employment or engage in any business or vocation, with or without compensation, during your service with the government? (If so, explain.)

Answer: No

Question 8: Do you have any plans to resume employment, affiliation, or practice with your present employers, business firms, associations, or organizations after completing government service? (If yes, give details).

Answer: No

Question 9: Has anyone made a commitment to employ you or retain your services in any capacity after you leave government service? (If yes, please specify.)

Answer: No

Question 10: Identify all investments, obligations, liabilities, or other relationships which involve potential conflicts of interest in the position to which you have been nominated.

Answer: None

Question 11: If confirmed, explain how you will resolve any potential conflict of interest, including any that may be disclosed by your response to the above items.

Answer: At present, I do not believe I have any interest which would present a conflict of interest or the appearance of a conflict of interest. Should a conflict occur at any time I would act expeditiously, in concert with Department of Agriculture Ethics Officer advice, to remove the conflict in its entirety, or to recuse myself from any action which may present a conflict of interest.

Reporting Status (Check Appropriate Box)		Agency Use Only		OOE Use Only		Termination Date (If Applicable)	
☐ Incumbent	☒ New Entrant, Nominee, or Candidate			MAY 3 1989			
Reporting Individual's Name		First Name and Middle Initial		Last Name		Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Year)	
CASON, James E.		James E.		CASON,		5/2/89.	
Position for Which Filing		Department or Agency (If Applicable)		Title of Position		Termination Period (If Applicable)	
Assistant Secretary, Natural Resources and the Environment		U.S. Department of Agriculture		Assistant Secretary, Natural Resources and the Environment		Incumbent: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.	
Location of Present Office		Telephone No. (Include Area Code)		Address (Number, Street, City, State and ZIP Code)		Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.	
18th & C Streets, N.W., Room 6610-A Washington, DC 20240		202-343-2191				Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)	
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)		Principal Deputy Assistant Secretary--Land and Minerals Management		10/6/88		Schedule A--The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.	
Presidential Nominees Subject to Senate Confirmation		Do You Intend to Create a Qualified Diversified Trust?		Yes ☐ No ☒		Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.	
Name of Congressional Committee Considering Nomination		Senate Committee on Agriculture, Nutrition and Forestry		Date (Month, Day, Year)		Schedule C, Part II (Agreements and Arrangements)--Show any agreements or arrangements as of the date of filing.	
Signature of Reporting Individual		Signature of Other Reviewer		Date (Month, Day, Year)		Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.	
I CERTIFY that the statements I have made are true, complete and correct to the best of my knowledge and belief.		James E. Cason		March 6, 1989			
Other Review (If desired by agency)		Signature of Designated Agency Ethics Official/Reviewing Official		Date (Month, Day, Year)			
Agency Ethics Official's Opinion		William J. Rainey		May 2, 1989			
The information contained in this report discloses no conflict of interest under applicable laws and regulations.		Signature		Date (Month, Day, Year)			
Office of Government Ethics		Signature		Date (Month, Day, Year)			
Use Only		Signature		Date (Month, Day, Year)			
Comments of Reviewing Official (If additional space is required, use the reverse side of this sheet)		Edw. = GS Smith (OOE), per discussion with Mike Kelley (Agriculture)					

(Check box if comments are continued on the reverse side)

NSM 7348-01-030-2444

218-108

PREVIOUS EDITION USABLE

James E. Cason

3

Part I

Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded \$1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

Identification of Assets

Example: XYZ Common

NONE

Type of Transaction (X)	Date Mo., Day, Yr.	Amount of Transaction (X)									
		Purchase	Gift	Exchange	Other	1000	1000	1000	1000	1000	1000
X	2/1/83										

Part II

Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only: Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment

received from one source totaling \$250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling \$100 or more in value; and (3) cash reimbursements of \$250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given to-

tally independent of their relationship to you. Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of \$35 or less when aggregating them for the total from one source. See instructions for further exclusions.

Source (Name and Address)	Brief Description	Value
Example: Marti Ann, c/o Rock Collectors, NY, NY	Airlines ticket, hotel room, meals incident to national conference 8/15/83	\$500
Marti Ann, c/o Rock Collectors, NY, NY	Leather briefcase for mailing president	\$125

Reporting Individual's Name
James E. Cason

Form Approved
 OMB No. 1545-0047

Page Number	4	Schedule	C
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Part I

Liabilities

All Filers: Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out. Items secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

Creditor (Name and Address)			Type of Liability	Date Incurred	Interest Rate	Term in applicable years or months	Category of Amount or Value (\$)			
1	2	3	4	5	6	7	8	9	10	11
Examples:	First District Bank, Washington, DC						\$10,001 to \$15,000	\$15,001 to \$50,000	\$50,001 to \$100,000	Over \$100,000
1	Oregon Department of Veterans Affairs		Mortgage on rental property, Redbank Beach, Collierville, Tennessee	1981	12%	28 yrs.				
2			Promissory note	1979	10%	in demand			X	
3			Mortgage on rental property	1987	8.75%	14 yr		X		
4										
5										
6										
7										
8										
Part II										
Treatments Or Arrangements										

SP 278 (Rev. 10/79)
FPA Chapter 294
U.S. Office of Personnel Management

Reporting Individual's Name
James E. Cason

Form Approved
OMB No. 3200-0002

Page Number
5

Schedule
D

Part I

Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership or other business enterprise or any non-profit organization or educational institution.

Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☒ **X**

Organization (Name and Address)		Type of Organization		Position Held		From (Mo., Yr.)	To (Mo., Yr.)
Example	Netl Assn. of Book Collectors, NY, NY Doe Jones & Smith, Hometown, USA	Non-profit education Law firm		President Partner		8/92 7/75	6/93 11/83

Part II

Compensation In Excess Of \$5000

Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period.

This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the

services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

NONE ☐ **X**

Source (Name and Address)		Brief Description of Duties	
Example	Doe Jones & Smith, Hometown, USA Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services Legal services in connection with university construction	

OCTOBER 12, 1989.

Honorable PATRICK J. LEAHY,
Chairman, Committee on Agriculture, Nutrition, and Forestry, United States Senate,
Washington, D.C. 20510.

DEAR MR. CHAIRMAN: Enclosed please find my response to the questions provided to me regarding my nomination for the position of Assistant Secretary of Agriculture, Natural Resources and Environment.

Thank you for the opportunity.

Sincerely,

JAMES E. CASON.

Enclosures.

RESPONSE OF JAMES E. CASON TO QUESTIONS REGARDING HIS NOMINATION TO BE ASSISTANT SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT

SENATOR PATRICK J. LEAHY

SOIL CONSERVATION SERVICE

Question 1. In his written questions to you, Senator Kasten asked if you favored a career civil service professional, or a political appointee as chief of the Soil Conservation Service. You reported that you had no intention of making any recommendation, and this decision was the Secretary's. If the Secretary were to ask for your recommendation, what would it be?

Answer. I would have no basis at this time for recommending any changes in the status of the position of Chief of the Soil Conservation Service.

Question 2. Do you consider the soil erosion problem in the United States to be serious, substantially taken care of, or in need of substantial additional effort?

One major point of controversy in the Conservation Compliance Program has been the adoption of Alternative Conservation Systems, which do not necessarily have to meet the "T" standard.

Do you support these Alternative Conservation Systems? If so, what are your reasons?

Answer. I believe that the soil erosion problem in the U.S. is a serious and never-ending concern. Erosion reduces the productive potential of the land and contributes to water quality problems when sediment is carried into our Nation's streams and rivers. The initiatives in the 1985 farm bill are very effective in helping to alleviate the problem on highly erodible cropland. SCS estimates that erosion on the acres enrolled in CRP have been reduced by over 450 million tons annually. Additionally, the conservation plans that have been prepared on highly erodible cropland under the conservation compliance provision will reduce erosion on these lands to between 4-7 tons per acre annually and are expected to achieve an annual erosion reduction of over 650 million tons.

I support the continued implementation of conservation planning. I will vigorously enforce the compliance provisions of the Conservation Title of the 1985 farm bill. I support the efficient management of the other erosion control programs which SCS administers.

I understand that the alternative conservation systems that were a part of implementation of the conservation compliance provision offered producers cost effective and equitable ways to substantially reduce erosion on their highly erodible lands. I support the use of these systems since they are proving to be effective in controlling erosion while not causing financial hardships to producers.

Question 3. There has been substantial concern about the quality of ground water in the United States. Do you consider ground water quality a serious problem, an overstated problem, or one that is best left to others than the Federal Government to handle?

Nonpoint source pollution from agricultural and forested land has been given sporadic attention over the last several years. Do you consider that a major problem or not? How would you go about doing something about the problem?

Answer. Both ground and surface water quality and quantity are very important to the American people and to President Bush. The President has identified water quality as a high priority issue; he has committed budget resources and he expects to see significant progress in this area. There are many Federal agencies involved in the water quality effort and USDA has a major role to play in this activity. I will, if

confirmed, have an important role in coordinating the USDA effort both within USDA and with other agencies throughout the Federal Government. As water pollution is a major problem, we must continue to identify and inventory both the point and nonpoint problem areas. We must identify those practices that are causing water quality problems and pursue improved practices that will reduce them. Positive actions to address agricultural water quality concerns must be well-founded and must be targeted on a priority basis. I believe that we can improve environmental conditions while allowing people to make a living and providing the goods and services that are needed by the American people.

Question 4. President Bush has stated as a Federal policy goal a no-net loss of wetlands. What actions do you see USDA taking to meet that objective? Would your approach be regulatory, incentives, or education? How would you go about developing the specific initiative of USDA to implement the Presidential statement?

Answer. I fully support President Bush's commitment of no-net loss of wetlands. I understand that the President has set up an interagency task force to develop new administration initiatives. USDA is represented on that task force and will contribute to the development of strategies to implement the no-net loss policy.

I understand there are several actions that USDA is implementing, under existing authorities, to further the President's no-net loss policy. These include:

- Modification of CRP criteria to allow producers with cropped wetlands to enroll the lands and restore the wetland vegetation and condition. It is estimated that 200-300,000 acres of wetlands were enrolled in the February 1989 signup.

- Vigorous enforcement of the swampbuster provision in order to discourage the conversion of wetland for crop production. I would, if confirmed, contribute to achieving the President's goal of no-net loss of wetlands through an appropriate combination of regulatory, incentive and educational programs.

Question 5. In your view, how would you resolve some of the apparent conflicts between the desire for clean air, clean water and safe use of pesticides with the needs for food and fiber production? How would you go about dealing with such questions?

Answer. I do not believe that the needs for food and fiber production and the desire for a clean and safe environment need to be mutually exclusive goals. Farmers, as well as others, understand the need for the safe use of agricultural chemicals in the production of quality food products. I believe that technical and educational assistance, combined with sound research by both the public and private sectors, can help attain both the goals of adequate food and fiber production and environmental quality.

Question 6. USDA programs of the Extension Service, ASCS, SCS, Forest Service and ARS have an important bearing on fish and wildlife resources in this country. How do you see the public's interest and concern for wildlife being reflected in USDA programs?

Answer. The interests of the fish and wildlife resources in the U.S. are being addressed and will continue to be addressed by USDA programs. The Soil Conservation Service, for example, provides technical assistance to farmers and ranchers in planning and installing wildlife habitat improvement measures on private lands. The Conservation Reserve Program is proving extremely valuable as a result of converting over 34 million acres of highly erodible cropland to grass and trees, including previously converted wetlands and filter strips along stream corridors. This is proving extremely valuable to fish and wildlife habitat. The Waterbank Program, administered by ASCS, protects wetlands and improves habitat for water fowl. Other USDA programs also make significant contributions to fish and wildlife. I will, if confirmed, continue to place a high priority on ensuring we take positive steps for the protection and enhancement of fish and wildlife habitat.

FOREST SERVICE

Question 1. What is your opinion of the forestry research program of the Forest Service? Is this an important activity? What type of leadership and direction would you see yourself giving for that activity?

Answer. I view forestry research as an indispensable and integral part of the Forest Service. Sound research will be the key to resolving the emerging issues related to the environment and management of the Nation's natural resources. I would maintain a strong research program which is responsive to regional and national issues. This commitment is the only way we will be able to wisely solve many critical problems like endangered species management, water quality, climate change, tropical deforestation and the retention of ecological values while managing natural resources for their potential benefits. Recognizing that we now live in what

is truly a global environment, I believe we should also maintain a program which would make us full partners in the international natural resources research community.

Question 2. Almost 60 percent of the commercial forest land in the United States is owned by small non-industrial private landowners who own less than 1,000 acres each. What approach do you see the Federal Government taking to encourage conservation and wise use of these lands so they help meet needs now and in the future? What do you see as the appropriate role of the Federal, State and local governments and private landowners?

Answer. The general approach for the Federal Government is to work in a cooperative way with other levels of government and the private sector to administer programs which provide assistance to non-industrial private forest (NIPF) landowners. Simply put, the complexities of forest management are such that a do-it-yourself approach will not work for most NIPF landowners. They need professional assistance.

Where the actual delivery of technical assistance is best handled by State government and others closer to the landowners, the Federal Government still has a role to ensure that local assistance is effective. National programs can provide for (a) leadership, (b) coordination, (c) technology transfer, and (d) information resource management. These kinds of activities can be more effectively managed in a national framework with the overall objective being to assist the States and others to work directly with landowners.

Cooperation is the key principle required by all levels of government and private landowners in managing and protecting the Nation's NIPF. A cooperative approach is appropriate since the public sector, the private sector, the general public, and the individual landowners all receive benefits from well managed NIPF lands. Role delineation should have some flexibility to meet changing needs, geographic variations, and the range of capabilities of the governmental organizations and individuals involved. In a general sense, the Federal Government should provide national leadership, interstate coordination, national program administration, and other responsibilities best handled above State and local levels. State and local governments can best operate program delivery systems and direct assistance to landowners. The key is that the entire effort be planned and managed through cooperative approaches.

Question 3. National forest system management has been roundly criticized by industry as being too environmentally oriented, and by environmental groups as being insensitive to environmental values.

In the last decade there has been increasing criticism of the stewardship of those lands for protection and management of fish and wildlife values as well as meeting appropriate outdoor recreation needs.

How would you see yourself providing leadership and direction for management of the National Forest System? What do you consider the appropriate balance of uses in the national forest?

Answer. As you say, there is considerable criticism regarding the management of the national forests. Much of this criticism is the result of what is viewed by many to be conflicting uses and purposes of the national forests. In a broad sense, the appropriate balance of uses in the National Forest System is defined by the various laws including the Multiple-Use Sustained Yield Act. But, in a practical sense, the appropriate balance of uses can only be determined after a thorough review of local factors. The appropriate balance of uses for each national forest has been determined through the approval of the Forest Land and Resource Management Plans (Forest Plans) required for each national forest by the National Forest Management Act.

I consider the balance of uses identified in the approved Forest Plans as appropriate. I would provide leadership and direction for management of the National Forest System to implement the approved Forest Plans in the balanced manner identified in the respective Forest Plans, and to seek resolution and approval of those Forest Plans that are not yet approved. Further, I would work with the interested public and the Congress to continue to seek ways to resolve the serious conflicts and differences regarding our national forests.

Question 4. The management of fish and wildlife on national forest lands by law and under the Constitution rests with the individual States as it relates to resident fish and wildlife. Major responsibilities are assigned to the Fish and Wildlife Service on all lands as it relates to the Endangered Species Act.

What are your specific plans to assure that fish and wildlife values receive appropriate attention in national forest programs?

Answer. I would, if confirmed, assure that the Forest Service works closely with the States and the Fish and Wildlife Service to assure that fish and wildlife values receive appropriate attention in national forest programs. I strongly support the initiatives the Forest Service has undertaken to ensure the long term protection and enhancement of fish and wildlife habitat and populations and will, if given the opportunity, continue to support these initiatives.

Question 5. You have been quoted in the paper as having "philosophical differences" with the Forest Service's recently proposed oil and gas regulations. What specific changes do you have in mind for these regulations?

Answer. None at this time. I have no preconceived notions for specific changes. I have not read the comments received on the draft rule nor have I seen the most recent efforts on a final rule. It is my understanding the Forest Service has almost completed work on the revised oil and gas regulations.

Question 6. Are you familiar with the "wise use movement" or the "wise use agenda?" If so, to what extent do you subscribe to their view of the use of our Nation's public lands?

Answer. Yes, I am familiar with the "wise use movement". The view of this movement, simply stated, is that there should be a greater emphasis on commodity and developed uses of the public lands. I would view this movement as representing a valid perspective about how the public lands should be managed just as I would view perspectives for increased environmental protection as valid. Strong differences of opinion are part of the reason that management of the national forests has become so difficult and controversial. My direction will be to find the appropriate balance in each case to be considered. I will, if confirmed, strive to build consensus on the most appropriate approach to managing the national forests.

Question 7. Do you believe that wilderness areas should be opened up to mining, oil and gas drilling, or other incompatible uses which are currently not allowed in these areas?

Answer. No. I have adhered to a long-term policy of protecting these areas from incompatible uses, and will, if confirmed, continue to do so in the future.

Question 8. Do you believe that the Federal Government should relinquish its claims to reserved water rights in the National Forest System?

Answer. No. Water rights properly belonging to the Federal Government should be retained.

Question 9. Do you believe that livestock operators with permits to graze livestock on national forests should be given the opportunity to acquire those lands, either by gift of the Federal Government or purchase?

Answer. As a general rule, no. The basic integrity of our designated national forest should be maintained and protected.

Question 10. Are you familiar with the Forest Service's "Change on the Range" initiative? If so, describe to us your understanding of this program, and what actions you intend to take if confirmed to implement or alter it.

Answer. Yes, I am familiar with the "Change on the Range" initiative. It is a program to recognize and promote rangeland values and benefits such as wildlife habitat, riparian areas and livestock production. If confirmed, I would work to implement the initiative by seeking the mutual support and understanding of both the livestock and environmental interests.

Question 11. Federal law specifically provides for protection of threatened and endangered species. What is your basic philosophy concerning the protection of such species? What actions do you see USDA taking that might further the protection of endangered species?

Answer. I believe strongly that we should act to prevent population decline so that listing will not be necessary. Once a species is listed as threatened or endangered, my philosophy is to protect and to provide for the recovery of species. I would like USDA to continue working with the States, the Fish and Wildlife Service, and with other public and private groups to take those actions necessary to recover threatened and endangered species so that they would no longer need protection under Federal law.

Question 12. The former Regional Forester for Region 1 has stated that he believes the current harvest levels in the region are too high to meet the Forest Service's sustained yield mandate. Do you agree? If not, do you think current harvest levels are about right or too low?

Answer. If confirmed, this is an area that will require further review. I am told that current harvest levels are based on approved timber management plans that clearly show the harvest levels can be sustained. However, the new forest plans being developed change allocations of land and apply integrated prescriptions that reduce timber yields on some areas of the national forests. The decision that pro-

vides added protection for the spotted owl removes additional areas from the timber base. All of these changes indicate that the new plans will likely provide lower harvest levels than the current ones.

FOREST SERVICE—FEDERAL LAND POLICY AND MANAGEMENT ACT

1. The Federal Land Policy and Management Act requires an evaluation of proposed land exchanges to guarantee that their values are equivalent. This includes the statutory review required for equivalency of monetary value and an environmental evaluation pursuant to the National Environmental Policy Act.

I am concerned about proposed exchanges of Forest Service lands for non-Federal lands, which have not been evaluated as equivalent exchanges as required by law. For example, H.R. 998, which would permit the use of lands in the Angeles National Forest as a solid waste disposal site for the Los Angeles metropolitan area.

Question. Will you insist that the requirement of FLPMA be followed for this exchange by the completion of an environmental assessment and an appraisal report?

Answer. The Angeles National Forest has previously received a proposal for an exchange such as you mention. The Forest Supervisor is currently preparing a Draft Environmental Impact Statement regarding the proposal. If confirmed, I will insist, if the exchange is to be consummated under our existing authorities, that the requirements of FLPMA be followed, and that the proper environmental analysis and appraisals be done.

Question. Will you require that these reports be available to Congress before the Department of Agriculture testifies on this bill?

Answer. I cannot require that these reports be available to Congress, prior to any testimony, if Congress decides to hold hearings on a legislative exchange before the environmental analysis is done. USDA would testify, if asked, on what is known about the exchange at the time of the hearing.

Question. If any other similar exchanges are proposed in the future, will you require that the appropriate reviews be completed before Congress considers these measures?

Answer. If confirmed, I would ensure that the appropriate analysis is undertaken expeditiously by the USDA and I would hope that Congress would wait for completion of any required analysis before taking action.

GENERAL

Question. Mr. Cason, in your confirmation hearing on September 27, 1989, Senator Lugar asked for you to clarify why you did not follow through on the Bureau of Land Management's spotted owl draft report after you had been given the initial briefing.

In your answer, you state the Forest Service was preparing a SEIS and the Fish and Wildlife Service was responding to a GreenWorld petition to list the spotted owl. You continue in your answer that after the briefing on the draft BLM report, "(we) thought these other two efforts would be more comprehensive and decided to limit the amount of follow-up that we spent" with the BLM report.

GreenWorld did not file their petition with the FWS until January 28, 1987. The report team was reconvened to complete the report in September 1986. Please provide more detail on how the GreenWorld petition influenced your decision to reconvene the team to "clean (the report) up and make sure that any of the conclusions drawn in the report were well-founded and defensible."

Do you have any documentation, contemporaneous with your decision to not continue work on the BLM report, confirming your contention that work was not continued because it was "subsumed by" the FS's SEIS and the FWS's petition to list the owl?

Answer. I appreciate the opportunity to clarify the points I tried to make at the hearing.

BACKGROUND

In early 1986, the Assistant Secretary for Land and Minerals Management and I discussed the spotted owl issue, with BLM staff, FS staff and other interested parties. These general discussions raised a number of concerns that did not seem to have ready answers. At the root of the issue, there seemed to be a lack of adequate data on the spotted owl and its needs.

We were aware that the spotted owl issue was recurring in nature, emotionally stirring and one of very high stakes. We had expectations at the time that future land use plans would have to address spotted owl needs and believed it quite likely

that litigation would result. We felt that it was imperative to improve our data base on the spotted owl so we could more knowledgeably make and defend land management decisions.

Even at that time, there was widespread anticipation that the spotted owl would be reviewed for possible listing as a threatened or endangered species. This concern raised several basic questions:

- How many spotted owls are there in the Pacific Northwest? [No scientifically based inventory had been done, so no one knew if there were insufficient numbers for a viable long-term genetic population.]
- What was the trend for the spotted owl population? [Information varied. And there was considerable speculation or cause for the undefined trend.]
- What habitat characteristics did the spotted owl need versus prefer?

These questions and many others motivated us to pursue a better assessment of the available data in anticipation of future need for it. In February 1986, we decided to form a team of BLM biologists and, in March, directed them to pursue the following objectives (paraphrased):

(1) From a biological point of view, list the criteria and data needed to knowledgeably manage the spotted owl for long-term population viability and the criteria and data needed to mitigate the impacts of spotted owl management decisions on the human environment.

(2) Assess all information, from all sources, to determine the quantity and quality of information available to answer the pertinent needs of the first objective.

(3) Identify the critical information gaps. [It was our intention that the assessment would be specific enough to permit us to construct a study program to fill the data gaps.]

(4) Assess the statutory and regulatory requirements and options for addressing the issue for O&C lands.

In May 1986, the BLM team gave its initial briefing on its efforts. The briefing and first rough draft of its report clearly showed that we had not had a meeting of the minds on the scope and purpose of the initiative.

At the time, I was undecided as to what to do with the document. It did not contain the analysis that I had expected and it contained conclusions which were unsupported. It did little to provide a solid foundation for a more informed management decision regarding the spotted owl.

HEARING QUESTIONS

During the hearing, I tried to respond to the two basic questions I have been asked most often about the BLM spotted owl report. Paraphrased, they would be:

- (1) How did you "follow-up" on the BLM report that was drafted?
- (2) Since the BLM team did not achieve your objective, did you "follow-up" to ensure the original purpose of the initiative was met?

REGARDING QUESTION 1

Further work on the report was not pursued from May to September 1986, primarily because it appeared unlikely that we could achieve the original objectives without starting from the beginning and we would have to spend a considerable amount of resources to do so. The motivation to spend more time on the initiative had been significantly reduced by an initial product that did not meet expectations.

In September, the team was reassembled and directed to finish their initial report. They were directed to make those changes in the document which would ensure any conclusions drawn in the report were well-founded and supportable. The report was subsequently approved by BLM management and released, in draft form, in May 1987.

REGARDING QUESTION 2

There was no express "decision" to not follow-up on our objectives for this initiative. Rather, on reflection, events occurred which undermined the motivation to "try again." Those events were:

(A) The May 1986, BLM initial report did not meet the above stated objectives. We felt that to produce the product we wanted would require the expenditure of significantly more effort and we did not consider such expenditures prudent.

(B) In July 1986, the Forest Service issued its draft SEIS, which was much more comprehensive than the BLM attempt. Further, the Forest Service had realized that there was a need to fill critical data gaps and were beginning to take steps to do so.

(C) In addition, in January of 1987, the FWS received the GreenWorld petition to list the spotted owl. An ESA analysis would force a comprehensive analysis of the quality and quantity of existing data—the type of in-depth analysis we had expected from our initiative. [Though the petition was not accepted until July 1987, there was little doubt that it would be acted upon.]

The latter two events essentially “subsumed” the need to independently “follow-up” on our original initiative. Together, the FS and FWS efforts would address many of the points we had originally envisioned and as a collective long term result there was no motivation to further pursue our original plans.

CONCLUSION

I am very aware of and dedicated significant time to the relevant activities of agencies acting on spotted owl issues and read hundreds of pages of documents related to the spotted owl that have been supplied to the committee.

In an effort to be fully responsive to the committee, I have tried to place the discussion in context. Many events concerning the spotted owl occurred between the beginning of the Forest Service SEIS effort in March 1985, through the present, often simultaneously. In rereading the hearing transcripts, I saw where I was not careful enough in distinguishing pertinent points when answering the questions posed. I apologize for any confusion. I hope this comprehensive answer is more clear.

SENATOR J. ROBERT KERREY

I have been informed that the questions you ask are under the jurisdiction of the Agricultural Stabilization and Conservation Service (ASCS), the agency which administers the Conservation Reserve Program and the landlord exemption provision of the USDA highly erodible land and wetland conservation rule.

ASCS falls under the purview of the Under Secretary for International Affairs and Commodity Programs, Richard Crowder. I am enclosing answers to your questions provided by ASCS.

According to ASCS, in those situations where landowners receive rent in the form of “crop sharing,” he or she is considered a producer and subject to the same requirements as the tenant. Where the landowner receives “cash as rent—he/she is not considered a producer. ASCS does not believe it would be equitable to extend the off-setting compliance requirements to landowners who do not directly participate in the production of an agricultural commodity on their land and who do not receive any USDA program benefits.

CONSERVATION COMPLIANCE

Question 1. Under the conservation compliance provisions of the 1985 farm bill, a—*landowner* who owns two farms, for example, is free to decide that one farm will be in compliance and thus eligible for farm program benefits, and that the second farm will not be in compliance and thus ineligible for farm payments. In other words, the landowner is not subject to off-setting compliance requirements that would force all his farms to be either in or out of the program.

By contrast, a—*tenant* must follow the conservation compliance requirements on each and every farm that he operates if he wishes to remain eligible for farm program benefits.

We have real-life situations in Nebraska where a tenant has convinced one landlord to do the necessary conservation work to be in compliance but cannot get the other landlord to cooperate. It is not uncommon to find the situation where an elderly landlord simply will not or cannot (afford to) build the terraces or do whatever else is required to comply. As a result, the tenant is in danger of becoming completely ineligible for farm program benefits, through no fault of his own.

Question. I feel strongly that any *farm* not in compliance should be ineligible for farm program payments, but isn't the policy that I have described exactly backwards? Why should we force the tenant into an all-or-nothing situation—when he often has little choice in the matter—but yet allow the landowner to pick and choose which of his farms will be in compliance?

Answer (from ASCS). You are referring to the landlord exemption provision of the USDA highly erodible land and wetland conservation rule. This portion of the rule is administered by the Agricultural Stabilization and Conservation Service which is under a different Under Secretary. A landowner who operates two farms and who is in compliance on one while in noncompliance on the other, loses USDA

program benefits on both farms. Likewise, if a tenant violates conservation compliance provisions on one landlord's farm the tenant loses benefits on all farms. The landlord loses benefits only on any tract of the farm where a violation occurred by the tenant. However, if the landlord is the operator of the farm where a violation occurred, then the landlord is then ineligible for benefits on that farm and any other farm in which the landlord has an interest.

CRP CONTRACT LIABILITY

Question 2. Under the Conservation Reserve Program (CRP), whoever signs a CRP contract—a landowner, a tenant, or both—is the party held responsible for any breach of contract? The government does not obtain a lien against the property in order to ensure that the contract is enforced.

In Nebraska we have had situations where a landowner has lost control of his property because of bankruptcy and the new landowner has failed to honor the CRP contract. As a result, the former landowner and in some cases former tenants are being assessed damages for contract violations.

Question. Do you see any merit to having future CRP contracts secured by a lien against the property rather than by the personal liability of owners and tenants?

Answer (from ASCS). The use of a real estate lien is an option that was considered in securing CRP contracts but was determined not to be a viable option in the case of CRP. Producers are required to designate fields or subdivide fields to include only those lands eligible for CRP. Additional out-of-pocket expense would be incurred by producers to provide a legal description of that land for the purpose of placing a lien on the property. Farm operators with long-term leases that do not own land but receive CRP annual rental payments do not have land to offer as collateral. In addition, many farmers are already carrying more debt load than their property may actually be worth.

FOREST SERVICE

Question 3. During recent months the Forest Service's management of our national forests has come under criticism for doing less than an adequate job as a steward of our national forests: a number of examples come to mind—the Tongass National Forest, the current disputes in the Pacific Northwest over old-growth groves. In your new position that effectively makes you the Department's highest ranking officer with major environmental responsibilities you will be asked to work with the Forest Service on these issues. Please comment on the criticism faced by the Forest Service and how you would recommend that it address these concerns. I would appreciate hearing your specific comments on the "old-growth" dispute.

Answer. Yes, the Forest Service is receiving considerable criticism from certain groups about the way the national forests are being managed. I am told that much of the criticism relates to the roadless areas of the Pacific Northwest and the Tongass of Alaska where the debate is whether or not roadless areas should be entered for timber sales. Elsewhere in the Nation there is criticism about clearcutting, and, again, whether roads or other developments should happen near roadless areas or areas of particular natural beauty.

We all need to keep in mind that there are many things going "right" for the Forest Service and that they manage programs for which they are not being criticized. The national wildlife and recreation strategies with their attendant cost/share program have been highly acclaimed—particularly by the wildlife and recreation groups. And we need to note the Forest Service does a fine job of managing over 30 million acres of existing wilderness, over 103,000 miles of trails, 3,300 miles of wild and scenic rivers, 169 alpine ski areas (nearly half the lift capacity of all ski areas in the Nation), over 10,000 campgrounds and picnic areas capable of accommodating almost half a million people a day, and provides a home for more than half of all the big game animals in the country. Much of this is done with the help of 60,000 volunteers annually.

Much of the criticism about timber harvesting and roadbuilding will diminish as forest plans are implemented and as the Forest Service finds more and more alternatives to harvesting trees by clearcutting.

However, the "Old Growth/Spotted Owl" issue of the Pacific Northwest will be much more difficult to resolve because so much is involved and the stress between competing uses is so great. The stakes are high in terms of jobs, the economy, roadless areas, and the habitat for special wildlife such as the spotted owl. The resolution to the spotted owl/old growth issue must be a compromise between the competing interests. Unfortunately, the Forest Service cannot, by themselves, arrange the necessary compromise. The States, the administration, and the Congress will all

have to work together to find an acceptable solution. Working toward this solution will be one of my highest priorities, if confirmed.

Question 4. During the past several years we, as policymakers, have become very aware of the growing concern among our citizens that we protect public resources, especially because increasing numbers of Americans are participating in outdoor activities. It strikes me that we are experiencing a significant change in attitudes about the environment. When I look at your record, and now I look at your authorization of Interior Department rules effectively would allow for mining in lands that the Federal Surface Mining Control Reclamation Act put off limits if a "valid existing right" existed (a rule that Sec. Lujan has recently withdrawn), I wonder how in tune you are with these growing concerns for more careful stewardship of our resources. Please comment.

Answer. I believe that my prior experience, as a steward of our Nation's public land resources, has made me very knowledgeable and receptive to the growing environmental concerns of the American public. My previous assignments have provided a considerable reservoir of experience to draw upon to address the environmental problems of today. My experience at Interior should prove especially helpful because I would come into the job without having to learn all the working relationships necessary to be effective. I know the issues of the environment. I know the issues facing the Forest Service. I know the people that must be involved in resolution of the issues. And I believe I know where President Bush stands on these issues.

Yes, there has been a significant change in attitudes about the environment. More and more people are concerned and want to know that things are being done right. Unfortunately, there is a lot of disagreement about what is right. Tree harvesting, for example, is a necessity of our society but many people would vote against the cutting of a tree.

The national forests are a tremendous resource and stewardship of this resource is a very difficult mission. It is in our Nation's best interest to always seek the proper balance when making stewardship decisions involving these treasured public lands.

I strongly support stewardship of our natural resources. I agree that we have an increasingly active citizenry that has a keen interest in how our public resources are managed for all the people and for the future. As I have stated to this committee, I will have an open door policy to all interests—to hear them and to make decisions based on the best professional input from the Forest Service and a full consideration of public input. If confirmed, I would want the National Forest System to be the world's showcase for balanced, multiple use natural resources management—the shining example of exemplary management, sensitive stewardship of land, air and water resources and a model demonstrating the real benefits of integrated decisions which pursue economic prosperity within the context of environmental protection.

SENATOR SLADE GORTON

SPOTTED OWL

1. In 1986, a group called GreenWorld petitioned the U.S. Fish and Wildlife Service to list the northern spotted owl as an endangered species. Under the Endangered Species Act, the Fish and Wildlife Service is obligated to review such petitions and to make determinations based on a review of the available biological data regarding the merits of the listing. Only factors related to the biology of the species are to be considered in this listing determination. You were quoted in the Washington Post through a spokesperson as "He said he contributed to the policy process and was asked for his opinion."

Question a. What specifically was your role in this policy process and who did you advise?

Answer. It is standard procedure to provide comments to other agencies regarding decisions impacting programs of your agency. I spoke to the FWS Director regarding my concerns for adequate data on the spotted owl. I believe BLM Oregon State Director provided technical data and comments to the Regional FWS Director directly in the field.

Question b. What was your "opinion," and how did it reflect the mandate that the Fish and Wildlife Service base its decision on scientific data?

Answer. I had no opinion on whether the owl was or was not threatened or endangered. I had very serious questions related to the availability of adequate data to make a knowledgeable, objective decision.

Question c. While often agency decisions may be withheld because there is "not enough data," when in this case would you feel there was enough data? At what point should an agency engage in a change in management strategy to preserve the status quo and set goals for filling the gaps in data?

Answer. I advocated an aggressive study schedule 4 years ago to fill the apparent data gaps. I initiated an effort within BLM to proceed in that direction. Management should change its strategy when the evidence supports a conclusion that current commitments will adversely and irreversibly impact the species. My principle concerns included no inventory (so we didn't know whether an excess over viable populations exists), little trends data (so we don't know whether we are having increasing or decreasing numbers—nor do we know that harvesting activities are impacting the trend) and we have no reliable models upon which we can reliably predict long-term prospects for species viability. These seem to be basic points for objective decisionmaking.

Question d. I am deeply concerned that the decisions made at Interior at that time have set us farther back in a resolution to the problems in the Northwest. The GAO report has done quite a bit of damage to the credibility of the U.S. Fish and Wildlife Service. If you had the scenario in front of you all over again, would you change anything?

Answer. Yes, I would have taken the time to carefully articulate my concerns over data adequacy in writing, and ask for a response from FWS on how these basic points were considered in their process.

Question e. In light of your involvement in the past with this issue, why do you believe you will be an effective leader and assist in conflict resolution related to the spotted owl, old growth and timber supply problems? Why should the timber industry be pleased to see you as a leader in this problem for the Northwest? And, why should environmental groups be pleased?

Answer. As an Oregonian, I know very well the basic issues involving the spotted owl, old growth and timber supply problems. I have promised to have an open door approach in which parties on all sides of the issue can voice their concerns and options for resolution. I have a history of consensus building on tough public policy issues and this issue will be no different. The timber industry of the Pacific Northwest knows I listen and am fair and if I am confirmed, the environmental community will find the same.

2. I understand that in February of 1986, you appointed a BLM task force to assess the status of the northern spotted owl on the O&C lands administered by the BLM. A draft report submitted in May of that year indicated that BLM management of the O&C lands would likely result in the necessity of listing the owl in 4 to 6 years given current old growth harvest rates. According to BLM personnel, you ordered all copies of this draft destroyed.

Question a. What was your view, at that time, of the conclusions in the draft report? Has your opinion changed since then?

Answer. I found the team could not support a number of the preliminary conclusions drawn in the report including the one cited above. It is imperative that staff recommendations or findings be well-founded. Ultimately, the analysis is always questioned by parties impacted by any conclusions and management must be able to depend on the accuracy of staff work in making difficult decisions.

Question b. Did you order that it be destroyed?

Answer. No.

Question c. Was a revised version later produced, minus the controversial portions regarding a listing of the spotted owl?

Answer. The BLM team was charged with a responsibility to review the report to ensure all conclusions drawn in the report were well-founded and defensible. The team made a number of changes to the report and then it was approved for public release by BLM management.

FOREST SERVICE

Question 1. With your responsibilities you will be faced with balancing commodity management with preservation of environmental quality. How do you plan to create such a balance and keep the Forest Service out of court?

Answer. If confirmed, I will work with Congress and the various interests to seek resolution and understanding of the issues. I will work through the Resources Planning Act (RPA) and with the approved forest plans to develop the agenda and definition for proper balance. I will also work to assure that the Forest Service properly complies with the various laws so their decisions can withstand judicial review.

Question 2. With the multiple-use mandate for our national forests the Forest Service needs to articulate its mission more clearly. How would you plan to articulate that mission? What, in your view, is the mission of the U.S. Forest Service?

Answer. The mission of the national forests is to provide a wide array of various goods and services for the American people. The Multiple-Use Sustained Yield Act, and other major laws provide mandates that the national forests be managed for a variety of uses that span the spectrum from the preservation of wilderness, to the protection of wildlife and rivers, to the harvesting of trees and the removal of minerals. My view is that this is an appropriate mission for the national forests but not one which is easy to achieve without controversy. The RPA and the forest plans have done a pretty good job of defining the balance of the multiple uses of the national forests. My agenda will be to find ways to continue to manage the national forests in a way that best serves the needs of the American people.

Question a. How does this view differ from the present or past missions or perceived missions of the Forest Service?

Answer. I don't think my view differs much from the present or past perceived missions of the Forest Service. What has changed are people's values and what they expect from the national forests. The increasing interest in the environment by all segments of our population intensifies the debates about how the national forests should be managed. This public interest and involvement indicates that we must be responsive to changing public values within the broad multiple-use mandate of the Forest Service.

Question 3. With the timber supply crisis in the Northwest, and the increasing demand for forest products, how do you suggest the Forest Service work to manage forest lands in an environmentally sound manner and still allow some amount of timber harvest?

Answer. The Forest Service must continue to demonstrate they will manage the national forests in an environmentally acceptable manner. In areas of particular stress, such as the Pacific Northwest, compromises must be reached between all interested parties to allow for the harvesting of timber in an environmentally acceptable manner.

Question 4. If a group of Forest Service biologists came to you presenting a good case for a change in Forest Service management policy, what would you do?

Answer. I am a very good listener and I appreciate insightful and innovative approaches. If a good case for change in Forest Service policy were presented, I would work with the Chief of the Forest Service, Secretary Yeutter, Members of Congress, and our various constituency groups to evaluate and consider the merits of the proposed changes. If the changes were viewed as prudent I would see that they were acted on.

Question 5. What is your view of existing and future oil and gas activity (i.e., exploration and production) on national forest land?

Answer. The oil and gas resources of the national forests are considerable. The Forest Service needs to expedite timely leasing so proper exploration and production can happen in an environmentally sound manner and in compliance with existing laws and regulations. Where oil and gas leasing and production has occurred on the national forests, it has been demonstrated that it can be done without significant adverse effects on other resources and the environment.

Question 6. What are your priorities for the Forest Service? What will be your immediate goals?

Answer. Obviously, if confirmed, one priority will be to implement the short term solution in the FY 1990 Appropriations Act related to the Spotted Owl/Old Growth situation in the national forests of the Pacific Northwest. I also have a strong commitment to the completion of forest plans and balanced implementation. I would also work for a strong forest research program and State and private forest programs.

Question 7. What do you believe is a sustainable timber sale level for Region 6?

Answer. The sustained timber sale level for Region 6 depends on a number of factors that are now being considered in the development of final forest plans. These factors include: amount of forested land allocated for timber production, the age of trees scheduled to be harvested, prescriptions for harvest that include consideration of other resource values, the scheduling of harvest to avoid cumulative impacts on watershed values or wildlife habitat, et cetera. I expect that the final plans will include all of these considerations and that the analysis will likely result in a timber sale level that is less than current levels.

Question 8. What programs in Region 6 require more emphasis and attention from the Forest Service?

Answer. During this next year the Forest Service has two top priorities in Region 6. The spotted owl crisis must be dealt with by following the direction provided by Congress. I believe that the congressional solution is designed to allow a limited number of timber sales to be offered while working on a long-term solution for the owl. The other top priority job is to complete the forest plans.

Question 9. What do you believe should be the role of research and monitoring within the Forest Service? What percentage of the Forest Service do you believe should go toward such activities?

Answer. Research is a key to resolving the emerging issues which face us in natural resource management. The Forest Service should carry on a stable long term research program which provides the appropriate technology to determine change in the environment over a long period of time and to determine if we are achieving our stated objectives in our land management plans. I believe the Forest Service is uniquely qualified to do this job and their past history in long term research shows they have made major contributions to the understanding of changes related to water quality and air pollution, changes in productivity following management practices, impacts of major pest outbreaks, and habitat requirements for endangered or sensitive species like the red-cockaded woodpecker and the northern spotted owl.

If confirmed, and in consultation with you and other Members of Congress, I would have to review the specific percentage of the Forest Service program dedicated to research and monitoring. I believe we should build on the current strong base program so that we are in a position to respond to the critical issues which will arise in the future, whatever they may be.

Question 10. How should the Forest Service serve this nation as a leader in global environmental issues?

Answer. The Forest Service should be a full partner in the international research community. For example, the global change issue is not just a concern facing this nation, but truly the entire world. We should be a leader in this area and be in a position to share our expertise and work cooperatively with others around the world to address these problems.

SOIL CONSERVATION SERVICE

Question 1. Regarding the Soil Conservation Service: Some in my State have raised questions regarding the Soil Conservation Service and dams. What are your thoughts on this?

Answer. The Soil Conservation Service builds dams as floodwater retarding structures under the Public Law 566 program. Whenever a flood control dam is constructed by SCS, an environmental impact statement is prepared and all interested parties have the opportunity to review and comment. In addition, the local sponsoring organization such as a soil and water conservation district or water improvement district is required to secure all Federal, State, and local permits including the section 404 permits of the Clean Water Act. These safeguards should assure that any dams constructed will be effective in controlling flooding while minimizing any environmental concern.

Question 2. What do you view as the most important mission of the Soil Conservation Service?

Answer. The most important mission of the Soil Conservation Service is to provide assistance through local soil and water conservation districts to America's farmers and ranchers in order to protect our Nation's soil and water resources. The two major priorities of SCS at this time consist of assisting producers to carry out their plans under conservation compliance provisions of the Food Security Act of 1985 and to assist with implementation of water quality measures on private agricultural lands. I will, if confirmed, aggressively pursue soil conservation efforts and provide leadership measures to improve the quality and quantity of our Nation's soil and water resources.

Question 3. Do you advocate any change in policy and direction that you see over the next few years for the Soil Conservation Service? If so, what?

Answer. USDA recently updated the national conservation program required under the Resource Conservation Act of 1977. This updated program called for the highest priorities of the Soil Conservation Service to be focused on assisting producers to control erosion on the Nation's agricultural land and to assist with control of agricultural non-point pollution. I believe that these two areas of concern will continue to be important and therefore I do not see any likely major changes in priority, policy or direction of the SCS in the next few years.

MISCELLANEOUS

Question 1. Many in my State have expressed concern with your association to the Department of the Interior under James Watt. How would you compare your public land use philosophies to those of Mr. Watt? Hypothetically, in a scenario where you might have advised Mr. Watt on land use issues can you provide some specific differences in your land use philosophies compared to those promoted by Mr. Watt? Can you provide an answer to the same question but compare philosophies to those of Mr. Hodel?

Answer. I did not work as a Deputy Assistant Secretary under James Watt. Because I did not have a senior policymaking position during Secretary Watt's tenure, I did not come to know him very well and could not fairly or knowledgeably compare or contrast our philosophies. I did, however, work with Don Hodel closely for several years. We worked together as a part of a team, sometimes Secretary Hodel and I agreed, sometimes disagreed, on policy positions but I always held him in high regards for his intellect, honesty, leadership ability and commitment to fairness and equity in all matters. We are both committed to the concepts of conservation and stewardship. If confirmed, I will demonstrate my continuing commitment to these critical concepts.

Question 2. Every national environmental organization has asked that your nomination be withdrawn. One could conclude that you will thus be ineffective in efforts of conflict resolution.

a. What groups actively support you?

b. How do you feel you will be a good public servant to those organizations and those organizations which have campaigned against your nomination?

Answer. I will work hard to serve all groups. Each is a subset of the 250 million stockholders we have as owners of the public lands or people impacted by actions on private land. There are numerous groups who have been very supportive of me including farming interests, natural resource interests and others. For those who have expressed concerns, I will, if confirmed, seek to reassure them immediately that I wish them to be an active and positive part of our public policy deliberations. Consensus and harmonious relations produce more success than any other approach.

Question 3. What do you believe should be the U.S. approach in the problems of tropical deforestation? To what extent is the Forest Service involved in correcting these problems, and what do you believe should be done by the Service in the future?

Answer. I believe the Forest Service has much to offer in dealing with the tropical deforestation problem. The Forest Service currently has tropical research programs underway at their Institute of Tropical Forestry in Puerto Rico, Institute of Pacific Islands Forestry in Hawaii, and the Forest Products Laboratory in Madison, Wisconsin. I understand these programs are already working on problems of wet and dry tropical forest management as well as utilization of tropical species. In addition to this research capability, the Forest Service would have a vast array of expertise in technology transfer, and management, protection, and administration of public lands which should be shared with other nations of the tropics. The Forest Service is committed to support of the Foreign Food and Agriculture Organization's Tropical Forestry Action Plan. In addition, I strongly support the tropical forestry plan developed by the Forest Service which emphasizes training, technical assistance, research, and cooperation with other international agencies and organizations in helping to solve the tropical deforestation problem.

Question 4. Section 522(e) of the Surface Mining Control and Reclamation Act placed certain lands off-limits to coal strip mining, including "national interest lands" such as National Parks, National Wildlife Refuges, Wilderness Areas, Wild and Scenic Rivers' buffer zones around schools, churches, cemeteries and homes; and other classes of lands. One caveat to the statute was that the prohibition on mining was subject to "valid existing rights". The legislative history of the Act makes clear that Congress intended "valid existing rights" to mean instances where the coal owner had obtained or made good faith efforts to obtain permission to mine the coal prior to passage of the Act.

On December 22, 1988, the Office of Surface Mining Reclamation and Enforcement published in the Federal Register, under your signature, a proposed rule that broadly defines valid existing rights to mean simple fee title to the coal. This puts literally all the areas Congress thought it had protected at risk of coal strip mining. The only option for protection under the proposal would be for some entity to buy out the coal owner. One result of this has been to give individuals who had no intention of mining a particular area an opportunity to declare their intent to mine unless the government buys them out—essentially a windfall.

Question a. Do you view this as a subversion of congressional intent?

Answer a. Had the statutory guidance been as clear, it would have been far easier to have completed this effort to define "valid existing rights" (VER). Attempts to define VER have been regulatory exercises, beginning in 1979 with the "good faith, all permits" test.

The most recent effort proposed essentially the two ends of the spectrum—"good faith, all permits" test at one end and "ownership and right to mine" at the other. Ten years of regulatory effort are indicative of the difficulty of the task, not subversion.

Question b. Do you believe that all Federal lands, including National Parks and Wildlife Refuges, should be subject to coal strip mining?

Answer b. I believe that no Federal set-aside lands, such as National Parks or Wildlife Refuges, should be mined. These are designated national treasures and should be protected.

Question c. In a time of Federal deficits, should the government be forced to buy out those who may own coal on these national interest lands but have no intention of mining it?

Answer c. No. The policy approach we printed in the Federal Register attempted to establish a definition for VER, and a mechanism for deciding VER issues. Further, the policy said we would prevent mining where VER were established—AND—the party intended to mine, then and only then, triggering the need for compensation. The vast preponderance of inholders in these areas have not pursued actions to leave the area nor to act on these private lands in a way detrimental to the surrounding land.

SENATOR HOWELL HEFLIN

SOIL CONSERVATION SERVICE

Question 1. The Soil Conservation Service (SCS) has utilized Alternative Conservation Compliance Systems (ACS) in administering the conservation title of the Food Security Act of 1985. These systems appear to offer an economically and technically sound approach for producers to comply [with conservation] programs. Based on the evidence that soil erosion has been significantly reduced, would you recommend SCS continue to base compliance on the ACS or will you recommend that producers be required to meet "T" standards?

Answer. I believe that the alternative conservation system that producers were allowed to use under the conservation compliance provision of the Food Security Act of 1985 provide a sound, effective means of achieving significant erosion reduction on highly erodible land while not imposing an undue economic burden on producers. I see no reason to change the policy to continue the use of alternative conservation systems.

In the future as technology and farm practices improve, we should continue to pursue initiatives to economically and efficiently reduce the adverse environmental impacts associated with soil erosion.

Question 2. The Food Security Act of 1985 placed added responsibility on the Soil Conservation Service. Do you have any comments on plans which would allow SCS to better meet the needs of producers in implementing the conservation requirements of the 1985 Act? Could you comment on the status of the plans required to be submitted and approved by 1990 for producers farming highly erodible land? Is SCS capable of assisting producers in completing the required plans prior to the deadline?

Answer. I am informed that SCS has essentially completed the job of developing the plans that producers will need under the conservation compliance provisions of the Food Security Act of 1985. They inform me that any producers who desired a plan will be able to get assistance from SCS.

Question 3. The definition of "wetland" utilized by SCS in administering the "swampbuster" provisions of the Food Security Act of 1985 seem to still be evolving even after 4 years. Could you comment on the status of the definition and the way SCS may administer the program in the future without creating confusion and economic hardship for producers?

Answer. The swampbuster provision of the Food Security Act of 1985 has proved to be very complex and in many quarters quite controversial. While the definition of wetland seems to be firmed up somewhat, it has proven to be difficult to achieve consistent interpretation across the millions of individual situations across the country. I will give my attention to assisting the agency in implementing the provisions

as equitably and yet effectively as possible without creating undue economic hardship on producers. If confirmed, I would seek the input of the members of the committee and impacted constituency groups to identify and resolve remaining questions involving a "wetlands" definition.

SENATOR MITCH McCONNELL

FOREST SERVICE

Question 1. The Daniel Boone National Forest covers 660,000 acres in 21 eastern Kentucky Counties. There have been about 8,600 acres added to the forest since 1984. Do you plan to continue to add acreage to our public lands? How much emphasis will you place on this?

Answer. Due to budget considerations, I am generally reluctant to add acreage to the public lands unless land is needed and has been identified as a priority Land and Water Conservation Fund purchase. I do support land adjustments and land acquisitions through land exchange where prudent. If confirmed, I would work with you and other Members of Congress to review land acquisition needs and priorities.

Question 2 I would like to follow up on an issue concerning Forest Service property. I visited the Daniel Boone National Forest during August and I was shocked at the problem that exists with the amount of marijuana that is being grown. Kentucky is rapidly becoming the largest producer of marijuana in our National Forest System and that is not a fact we are very proud of. The Forest Service in Kentucky received only \$120,000 to fight drugs in 1988, of that amount only \$70,000 was available for destruction of the plants. On their behalf they were able to destroy 130,000 plants, for which I commend them. I want to know from you how high on the priority list you will place fighting the drug problem in our national forests?

—Will you consider adding personnel to the Forest Service for law enforcement?

—Would you consider requesting the involvement of other law enforcement agencies?

Answer. President Bush has made the drug problem in the United States a priority issue. I, too, am committed to resolving this terrible problem. I am pleased to report that during FY 1989 over \$295,000 was available for the Daniel Boone National Forest for marijuana eradication. About \$500,000 will be dedicated to the Daniel Boone in FY 1990. We continue to shift our available funds into the areas of highest need. The monies will cover cost for marijuana eradication, arrest, and prosecution of growers and for reimbursing cooperating State and local law enforcement agencies. The Forest Service is currently meeting with the Kentucky State Police, local county sheriffs offices, and other Federal agencies on joint actions that can be taken in 1990 to eradicate cannabis cultivation on the national forest. The Forest Service has a mobile work force throughout the Service that will be available to assist on the Daniel Boone National Forest during the marijuana growing season. As this is a seasonal problem, only a few additional Special Agents will be added to the permanent work force.

COAL

Question 3. Nearly 1 year ago you signed the proposed rule that would define valid existing rights for coal deposits. That proposed rule attracted criticism from both environmental groups and the coal industry. In July of this year Secretary Lujan formally withdrew the proposal. Do you still believe that signing the proposed rule was the right thing for you to do? WHY?

Answer. Yes, I do. We had no illusion that this proposed rule was going to be perfect. We had debated the issue for months internally and needed some outside perspectives to move further. The public comments and perspectives that we received on this proposed rule will be very helpful to Secretary Lujan and OSMRE Director Snyder, in refining the issue and the options for addressing it. It is very important to have a (VER) definition and mechanism in place for addressing VER applications.

The eventual decision should be equitable, balance public and private interests and be specific enough to facilitate administration.

The CHAIRMAN. Thank you very much. Before I start my questions, Senator Conrad, did you have any statement?

Senator CONRAD. In the interest of time, Mr. Chairman, I will ask to put my statement in the record.¹

The CHAIRMAN. And with the opportunity to add to your prepared statement later as you see fit. Thank you.

Mr. Cason, if you are confirmed by the Senate will you faithfully execute the laws passed by Congress regardless of any prior statements you have made or biases you may have held?

Mr. CASON. Yes, sir, I will.

The CHAIRMAN. And if your nomination is approved by the committee and the Senate, do you promise to respond to requests to appear and testify before this committee or any other duly constituted committee of the Senate?

Mr. CASON. Yes, sir, I will.

The CHAIRMAN. Thank you. One of the things we have stressed in this committee and other committees on which I serve is that in confirming people for positions such as yours, we are speaking for all the American people. We have to make the decision that our 250 million fellow Americans don't get a chance to do directly, and that is to determine with confidence that such officials are going to be honest and fair.

If you become Assistant Secretary of Natural Resources, one of the very tough decisions you are going to have to make will concern the future of the spotted owl and harvesting of old-growth timber in the Pacific Northwest.

You were, 3½ years ago, Assistant Secretary for Land and Minerals at the Department of the Interior, where you were responsible for forestry and environmental policy in the Bureau of Land Management (BLM).

On May 20, 1986, you were briefed on a draft report by a team of BLM's top wildlife experts, and that report said, "If harvesting of old-growth continues at current levels for four to six years, there's a high probability that the spotted owl will be federally listed as threatened or endangered. However, at that time, there will be little suitable habitat available for management."

It is claimed that rather than acting on that report that you suppressed that report. I have questioned you, as you know, at some length on this, and when I questioned you on June 20 I asked you whether at the end of the May 20, 1986, meeting in which professionals warned you that continuing timbering would endanger the owl, I asked you, "Did you collect all the reports?"

My notes say that you responded—that one of the team members told you that the team leader picked up the copies. In other words, my question was do you recollect a meeting where you picked up all the copies. Your answer was, "One of the team members told me the team leader picked up the copies."

Is that answer correct?

Mr. CASON. I believe so, sir, yes.

The CHAIRMAN. Even though you did not personally collect the report, did you not personally order a team member to collect all the reports?

¹ See p. 23 for the prepared statement of Senator Conrad.

Mr. CASON. Senator, as I understand the issue, I did not—I did not have a memory of having done that. I sought advice from the team members to find out what did happen in that circumstance, and to the best of my knowledge what occurred is after the team issued its—or gave me its briefing—I discussed the matter with the team and with the Deputy Director of the Bureau of Land Management, who at that time was a person named Dave O'Neill.

We visited about what the report had to say and the changes that need to be made in the report and the fact that it required a considerable amount of more work, and we discussed that it was a very sensitive report because of the volatility of the issue.

And as I understand it, the Deputy Director of Bureau of Land Management called the team after that discussion and requested that they collect the report.

The CHAIRMAN. Well, that's not specifically my question. Did you ask somebody to go and ask for all those reports?

Mr. CASON. I don't believe so, sir.

The CHAIRMAN. Did you say something at that time to the effect of, "Are all the copies of the report in this room?"

Mr. CASON. Yes, sir, I did.

The CHAIRMAN. But you do not recall telling the team leader to collect all the copies?

Mr. CASON. I don't recall personally asking the team leader to do that; no, sir.

Our concern at that time, Senator, was that this was a very, very volatile issue, and it was our feeling—mine, the Assistant Secretary's, and the Deputy Director of the Bureau of Land Management—that the report had not been written very carefully, and that the report could portend to give us more difficulty until it was cleaned up and all the conclusions drawn in it were justifiable and sound.

The CHAIRMAN. Some of the people present, including the team leader, remember you telling the team leader to collect all the copies, but you do not recollect that.

Mr. CASON. I do not recollect doing that personally; no, sir.

The CHAIRMAN. You say you do not recollect doing this personally. I mean if you did it, you did it. And if you didn't, you didn't. Is that what you're saying?

Mr. CASON. I guess that would be accurate, sir.

The CHAIRMAN. Two people present at the meeting remember something like the following exchange between yourself and one of the BLM wildlife officials.

The official said something like, "You mean I can't have a copy of this report," and you responded, "That's right," and the official said words to this effect, "We need this report to assist us in our plans to manage the owl. We have put a lot of time and effort in this, and it should be used." You are reported to have responded, "I just told you you're not going to use this report for anything."

Do you recollect a conversation in words or substance similar to what I have just recounted?

Mr. CASON. Senator, I don't recognize the words specifically. I do recall—

The CHAIRMAN. About the substance.

Mr. CASON. The substance is during that time I was very concerned about how the team had dispelled its mission to go out and assess the quality of the data that was available about the spotted owl, and during the discussions of the document that they had initially drafted we were very concerned about the conclusions that they had drawn which did not appear to have solid foundation.

And with that, I was very concerned about that document being used until it had been reviewed inside the agency and had the proper signoffs by the departmental management.

The CHAIRMAN. Do you recall saying—for whatever reason—words to the effect, “I just told you. You’re not going to use this report for anything?”

Mr. CASON. No, sir, I don’t.

The CHAIRMAN. Nothing even close to that?

Mr. CASON. I don’t believe so, sir.

The CHAIRMAN. So you deny that’s correct?

Mr. CASON. Senator, I think it is entirely possible that the gentleman on the team who would have interpreted the conversation that way.

At the time——

The CHAIRMAN. Would you want him to interpret it that way?

Mr. CASON. No, sir.

The CHAIRMAN. How would you have wanted him to interpret your conversation?

Mr. CASON. Mr. Chairman, what we were doing at the time, at my initiative, was I had assembled this team of BLM biologists in an effort to try and do something outside of the limelight to get a better understanding of the spotted owl issue, what our statutory mandates were and what sort of options we had to respond as a policy matter to the spotted owl issue.

This team was charged with going out and sitting down and writing out a list of criteria for what one would need to know in order to manage the spotted owl well to ensure its long-term viability, and they also had a requirement to have criteria to allow us to isolate and define what measures we could take to ensure that we minimized the amount of adverse impact on the human environment while we protected the owl.

It was our concern at the time that the assignment did not get done, and that the team had not fulfilled its mission, and that the conclusions drawn were not well-supported. And that’s always a concern to us in these positions because ultimately the determinations of our staff that become public policy must be able to be defended.

The CHAIRMAN. Did that team have reason to believe that at the end of that meeting that you had put that whole report on indefinite hold?

Mr. CASON. Yes, sir, Mr. Chairman, they could have had that feeling because when I walked out of that meeting——

The CHAIRMAN. And you did nothing to disabuse them of that feeling?

Mr. CASON. Not at the time; no, sir. At the time——

The CHAIRMAN. And was that the feeling you wanted them to have?

Mr. CASON. Frankly, Mr. Chairman, I hadn't thought that far ahead on that particular issue. When I walked out of the meeting, I didn't know what to do, either. We had had the team report, and we were very disturbed about how the team had conducted its job.

And let me tell you, Mr. Chairman, I don't believe it was the team's fault. I think if there's any fault in this issue it's probably mine because I didn't do a good enough job of explaining to the team exactly what we were after and give them enough guidance during the process.

But it's entirely possible that they walked away from that meeting believing that the report would be on indefinite hold because I at that time did not know what direction we ought to head and what further direction to give them.

The CHAIRMAN. Well, they also might have gotten the impression that you weren't giving them the direction. The direction was don't go in the obvious direction indicated by the report. We are not about to protect the spotted owl or anything else, if that's the direction of the report.

They could also have gotten the impression from you that that was now the direction you were giving them. Is that correct?

Mr. CASON. Mr. Chairman, it is possible that the individual team members on that task force could have arrived at a number of conclusions. After the report, we discussed the issue with BLM management, and they were assigned the task of following up on the report and bringing it to conclusion.

The CHAIRMAN. Senator Hatfield, who had tried to be here earlier, but could not make it then because of changes in the hearing schedule is here now. I let him know earlier that when he arrived, because he wished to be part of the introduction, that we would give him a chance to speak.

And one of the things I have learned about this body is the seniority system. Senator Hatfield is more senior than all of us.

Mr. CASON. I will certainly defer.

The CHAIRMAN. I say that because also remembering when I first came to this body I was number 99, and one of the treasured pieces of correspondence I have is a letter from Senator Hatfield explaining when he first came here he was number 99, and don't worry, someday things will be better.

For those first few months, that was the only reed of hope that I held onto. I yield to Senator Hatfield.

STATEMENT OF HON. MARK O. HATFIELD, A U.S. SENATOR FROM OREGON

Senator HATFIELD. Mr. Chairman, you are very gracious, and I appreciate the opportunity to come in late and interdict your line of questioning. I apologize for that.

As you know, I have been representing the Republican side of the aisle in negotiating the drug treatment program. Senator Byrd, our chairman, and I have just concluded our initial presentation of an agreement that we reached, and I had no option but to be there to bring an expeditious end to our negotiations.

Mr. Chairman, I come today on behalf of Senator Robert Packwood, my colleague from the State of Oregon. He had his schedule

problems, as well, and asked me to represent him as well as myself in making these remarks.

I do not have to introduce Mr. Cason at this point. That has happened, but I would like to make a few remarks about him.

The President, as you know, has nominated him to serve as Assistant Secretary of Agriculture for Natural Resources and Environment. I think we all recognize that this is a controversial nomination. Like Mr. Cason, who comes from our State, Senator Packwood and I believe in being very frank.

But I want to say that after months of reported stories, charges and countercharges surrounding Mr. Cason's record of service, I think this committee has an opportunity to sift through all of that and establish fact from fancy—that is part of the hearing process.

I think this committee not only has that opportunity but, I think it has that responsibility. I am sure that you will find that Mr. Cason is a very blunt, forthright and frank person. So I have no concern about our ability through this process of getting facts instead of opinions or interpretations.

Whatever happens, I think Mr. Cason, his parents, James and Joan Cason, who are here this morning, and the committee ought to recognize the pride we have in this person's life.

I do not know, Mr. Chairman, if you are aware that Mr. Cason is from a migrant labor family. Born in Texas, he lived in Idaho, California, Colorado, Missouri, Oregon, all before he ever entered high school. They went from camp to camp; from State to State. The Casons moved with the crops, as our migrant laborers do, which meant Jim Cason could expect at least three different schools in any one school year.

When they finally did settle down, at the insistence of his mother, they settled in Hood River, Oregon. Hood River is an area of apple and fruit growing. The Casons had been there before, and picked the crops. Jim was in the ninth grade at that time.

His was a world of hard work and hard living. There were 12-hour days and weeks on weeks with no days off. Having been Governor at a time that we Oregonians established the first legislation to protect migrant laborers, Mr. Chairman, I speak from very personal experience in knowing something about the conditions of migrant labor camps and the problems of getting their children educated. The Casons were a family whose survival depended on their commitment to one and each other; a cohesion of effort that has held that family together.

That the man whose nomination that you will consider today even made it to college is a testament to his determination and that family's support. That he graduated among the top 10 of his class at Pacific University, on full scholarship, while working 40 hours a week, is a testament to his strong will.

Please understand the man as a product of his environment and his background, as we all are products of our environment and background, to one degree or another.

Mr. Chairman, the job for which the President has nominated Jim Cason is critically important to all of us, and to one who comes from a public land State, especially. As a nation we have attempted to create a delicate balance between the Nation's human and natural resources. And I am sure that as the Chairman and the mem-

bers of this committee know, that task becomes more difficult every day because of the polarization that is occurring in our country.

Good faith cooperation between Congress and the executive branch is even more important today than it has been in the past.

Mr. Chairman, I shall close by saying that Senator Packwood and I know that your committee understands the importance of this position for which Jim Cason has been nominated and we are confident that you will give him a fair hearing. And we stand ready to assist you in any way.

Thank you.

The CHAIRMAN. Thank you, very much, Senator Hatfield. I say that it is partly because of the shared concern of the importance of this position, that we have taken the amount of time that we have. When you look around the committee, virtually total attendance here on both sides of the aisle gives you an idea of how much concern we have here.

What I would like to do is just—and I realize that you have to go back to your other work—incidentally, congratulations on the completion of the drug treatment program negotiations.

Senator HATFIELD. Thank you, Mr. Chairman.

The CHAIRMAN. Let me, if I might, finish the line of questioning that I interrupted so that Senator Hatfield could speak, and then yield to Senator Lugar.

I have a number of other questions, but back on that same report, the impression left is that the report was going in a direction that you did not like; that was the end of the meeting; gather up the report; lock it away.

And the reason I say that—the team leaders' notes, if you look at them, clearly show the team was not convened to finish the report until press accounts of that draft report started to show up.

The team leaders got word the report was in the press on July 31, 1986, and a call was made to—not because of the report, but because of the press accounts—a call was made to a BLM, Washington office official. He went upstairs with it, and word came back right away from the higher authorities: better reconvene that team.

Now, an argument can be made, Mr. Cason—and this is why I want you to have the chance to give your response on it—but the argument can be made that you were given first a draft report that has crucial implications; everybody would agree to that—for BLM timber management—that you chose to just try to lock that away, in fact, suppress that report.

And in a case where government professionals are indicating that the BLM actions could lead to the endangerment of a species. Now, do you disagree with that analysis?

Mr. CASON. Mr. Chairman, I believe that conclusion could be drawn from all of the evidence that is there. That is not what happened during this time process.

We had the initial effort, on the part of the task force; we had seen it, and we were trying to figure out what to do with it. At the same time, we were also working with U.S. Forest Service, which was going through a similar kind of effort, with their SEIS on the spotted owl, and did not believe that it was fruitful for us to finish

the independent effort at that time, until we had some better data from where the Forest Service was going.

It does not mean that it was the right thing to do; it does not mean that it was necessarily the wrong thing to do, but that was the decision we made at the time.

We did spend a lot of time with the Forest Service, our staff did, and when we had the problem we did end up finishing the report with the task group.

The CHAIRMAN. After it was in the press?

Mr. CASON. I think that was a prompting initiative that caused us to take on the issue right at that time.

The CHAIRMAN. But should not you have been the prompting person? I mean would that not have been really a part of your stewardship and the fact, that after all, here is a report leading to a clear conclusion that a species may be totally endangered?

Mr. CASON. Mr. Chairman, that is one conclusion that could be drawn from the exercise that we went through. The evidence that we had at our disposal, at that time, in the Assistant Secretary's office, led us to believe that we had the time to cooperate with the Forest Service and take a look at their effort and learn what we could from them, without finishing that report, at that time.

Subsequently, we have had a number of activities that have happened on the spotted owl issue. I do not know whether that decision was right or wrong.

The CHAIRMAN. But the evidence was that you had plenty of time. It appeared that nothing in the evidence changed; the only thing that changed and sped up the timetable was that the public might have learned what you were doing because of the press accounts.

Is that true? There was no new evidence between the time the report was collected after that meeting, to the time the report was talked about in the press and then everybody went back to meeting, was there?

Mr. CASON. Senator, I do not believe so. We were in a situation that, from our assessment from what we knew in the Assistant Secretary's office, was, there was approximately 6 million acres of old-growth timber in the Pacific Northwest and approximately 3.5 million of those acres were already preserved, and we had a timber harvesting program that would have impacted very few of those acres during the pendency of this report.

So we were not of a position nor were we concerned that the immediate conclusion of this report was going to dramatically alter the issue. The Department of Interior and the Bureau of Land Management, under our stewardship, had already taken action to preserve spotted owl habitats, in concert with the U.S. Forest Service, and the State of Oregon.

And we believe that those efforts, at that time, were satisfactory while we cooperated with the Forest Service on their SEIS.

The CHAIRMAN. Well, I may want to go back to this, but I have intruded on Senator Lugar's time, and he is showing his normal courtesy with letting me get away with what I should not.

I will yield to him for whatever amount of time he wishes.

Senator LUGAR. Thank you, Mr. Chairman.

Mr. Cason, we visited in May, and at that time, for the benefit of my colleagues, as well as my own understanding, I gave to you a list of questions and you responded to those promptly and in writing. The Secretary of Agriculture, Mr. Yeutter, sent over your answers with his endorsement of them.

I simply wanted to follow through during my first round of questioning on answers that you gave. There are important questions that I want to follow through later on your general philosophy in the Forest Service and soil conservation.

But in the first instance, my first question was, did you recommend to the Fish and Wildlife Service that the spotted owl not be listed under the Endangered Species Act? Did you recommend that the spotted owl not be listed, what were your reasons for such a recommendation, if you did make it?

And your answer was: "recognizing that I am neither a biologist, nor a spotted owl expert, I offered no opinion on the point of whether the owl should be listed as a threatened or endangered species."

I did, however raise other questions to you regarding whether it was appropriate to make a listing decision, without the benefit of such critical information, as adequate data on trends, scientific models, competence of scientific valid inventory, populations and so forth.

In following through, what was the nature and degree of your involvement in this decision? Your answer was, "I had no role in the decision, itself. I never possessed any authority for making the decision nor did I supervise or control any individual responsible for the decision."

Now, in answer to the question, of whether you opposed the Fish and Wildlife Service—and I have quoted your written replies in my letter—Frank Dunkle, the head of the Fish and Wildlife Service, told my staff and Senator Leahy's staff, during their joint questioning of witnesses, that you vigorously opposed not only listing the spotted owl, but that in a meeting between you, Mr. Dunkle and Secretary Hodel, you accepted a petition to review listing the spotted owl.

The meeting between yourself, Mr. Dunkle, and Secretary Hodel followed a telephone call to you from Rolf Wallenstrom of the Fish and Wildlife Service, region 9, who had heard rumors that you were holding up the petition. Wallenstrom further had the impression from this phone conversation with you, that you were firmly opposed to listing the spotted owl.

Would you please clarify this apparent discrepancy, with the conversation of Secretary Hodel, Mr. Dunkle and your position with regard to the spotted owl listing?

Mr. CASON. I appreciate the opportunity to do that, Senator Lugar. The spotted owl issue is very difficult. And a lot of things have been said on the spotted owl issue.

I was the recipient of the phone call from Rolf Wallenstrom, who was the Fish and Wildlife Regional Director in Portland, Oregon, the person for dealing with the petition, as I understand it.

Mr. Wallenstrom called and said, "it is my understanding, I have heard through the rumor mill that you are holding up the petition for listing." At that time, I told him, no, I am not holding up the

petition for listing. I do not know where it is; I do not have anything to do with it, but I will check and find out for you.

I did check and I found that it was with the Director Dunkle and that he had not acted on the petition. And I raised the issue to the Secretary, for him to make a decision, to ensure that we met our statutory responsibilities to make a timely determination on whether the Department would accept or reject the petition.

And, at that meeting, the Secretary spoke with Mr. Dunkle about why the petition had not been accepted, and a decision was made that it would be accepted. It was not over my objection. I am concerned about the process, but it was not over my objection.

Senator LUGAR. Mr. Cason, in answer to my written question No. 2, about whether you attempted to suppress a scientific report of a BLM task force on timber harvesting, you answered, "The document, in draft and final, has been in public circulation for over 2 years, clearly indicating it was neither suppressed nor destroyed."

In answering this question, you do not specifically comment on the allegation that you attempted to suppress the BLM's team report. My staff, and Senator Leahy's staff have interviewed the members of the BLM team and the team leader who told them that after a May 20 meeting, you said that the team's work was put on indefinite hold.

Now, this is essentially the question you have just engaged in with Senator Leahy. Do you have any further comment as to why the report was never used to provide a scientific basis for considering new options? Clearly, that was the intent I gather, from your testimony today, of having the report written and collected.

I am still somewhat confused, as to why you did not follow through. If this report was unsatisfactory and did not really satisfy the guidelines that you were seeking how did you attempt to clarify for your own decisionmaking and the recommendations of the staff that you had utilized thus far?

Mr. CASON. I appreciate the opportunity to respond to that, Senator Lugar.

One thing that I would like to correct on the answer that I provided you, there is one misunderstanding that I had. As I understand it, the report has not been issued final. It is still in a draft stage and has not been concluded. So I wanted to correct that.

The reason that we did not follow any further with this report is it was the feeling of the Assistant Secretary, the Deputy Director of the agency and myself that this report did not add materially to the information that was available because it was being subsumed by two other processes. The first being that the Forest Service was going through its SEIS process on the spotted owl, which was a much more comprehensive effort than what our Bureau of Land Management team was going through.

Secondly, with the addition of the petition for listing from Green-World in the Fish and Wildlife Service, the Fish and Wildlife Service was then beginning a very exhaustive process of trying to determine the validity of the concern that the spotted owl was threatened or endangered.

When we got our initial report from our BLM task group, and after that initial report, took a look at it, and thought that these other two efforts would be more comprehensive and decided to

limit the amount of followup time that we spent with this one. The followup time that we did spend with the BLM report was designed to clean it up and make sure that any of the conclusions drawn in the report were well founded and defensible. And then, after that, we could issue the report upon BLM approval as the draft BLM report.

Senator LUGAR. In answering my question about your comments on the Forest Service's proposed oil and gas leasing regulations, you indicated that, as Assistant Secretary, you would favor including "a mechanism" which "provides for unilaterally addressing tract withdrawal when lease and/or permit stipulations cannot adequately protect the environment."

Could you explain how this condition differs from the lease stipulation in the proposed Forest Service rules, to which you objected, by which the Agriculture Department would be free to "preclude all operations on a leasehold where analysis of the environment indicates such an action is appropriate"?

Mr. CASON. Yes, sir. I appreciate the opportunity to address that.

The principal concern that we had at the Department of Interior was that the contingent right stipulation approaching embodied in the Forest Service rule would allow the exercise of a unilateral decision not to grant further rights to explore and develop a lease that has been issued.

The principal concern we had about that is there was no provision at all for being able to compensate the companies that had their lease term so exercised. And what we wanted to be able to do, or what I think we ought to be in a position to do is if we issue a lease, we ought to be in a position that the lessee is able to fully explore and develop their lease. But if we find that there is an unmitigatable problem, and we decide to unilaterally terminate the lease, we ought to have a provision to be able to pay them back for the amounts of money that they have invested in it. And that is our principal concern.

The effect on the environment ends up being the same. The mechanism how you get there is different.

Senator LUGAR. In responding to a press criticism of your comments on the proposed Forest Service oil and gas regulations, you told the Casper Star Tribune on January 6, 1989, that there are "philosophical differences" between Agriculture and Interior. You said that in Interior, "we try to squeeze on to each acre all the compatible uses we can. It appears that the way the Forest Service is leaning is to set areas off for specific uses."

First of all, is this an accurate quote, and could you explain at greater length the conflict between Interior's philosophy and the philosophy to which the Forest Service is heading?

And, to illustrate, would you apply your philosophy that you would have as Assistant Secretary of Natural Resources and Environment, to use such acreage for oil and gas leasing and wilderness, roadbuilding and wildlife habitat, timber harvesting and recreation? In other words, when do you think it is appropriate for the Forest Service to set aside areas for specific uses?

Mr. CASON. Well, Senator, that is a big order.

As far as the quote goes, I do not remember having an interview with the Casper Star Tribune. It sounds like it is a culmination of

several other interviews that I have had over the past several years that have been sort of pulled together into this particular quote.

I saw the quote in Jack Anderson on squeezing acres, and the reference to the philosophical difference sounds like it comes out of the comments that we send to the Office of Management and Budget from the Department of Interior.

But to the issue that lies underneath, our concern at the Department of Interior and the philosophical difference that is referenced is the approach that gets taken on how we conduct our natural resources programs under statute.

Both the Department of Interior and the Department of Agriculture were participants in the congressional process to reform the Oil and Gas Leasing Acts for oil and gas resources. The Bureau of Land Management implemented a set of regulations first in this process and did so very expeditiously. The Forest Service was subsequently developing a set of regulations.

The principal concern referred to here was that the Bureau of Land Management has a multiple use type philosophy of trying to do what we can to bring natural resources to the forefront while ensuring an environmental sensitivity in doing so. They do that through a land use planning process, a NEPA compliance process, and then when they issue a lease, they issue the lease with terms and conditions designed to protect the environment.

On the other hand, when we were taking a look at the Forest Service rules, the Forest Service rules, in the preamble, gave the impression that oil and gas leasing are natural resources subject to development, but that energy and minerals area would be absolutely at the bottom of any pecking order; that all other lands would be set aside for predominant use, and then anything that happened to be left over would be possibly available for oil and gas leasing.

I think the situation that we were most concerned with is that the United States is in a very difficult arena for our oil and gas domestic resources, and that there had been a considerable push during the administration to try and get people focused on the fact that we need to be diligent at looking for opportunities to have domestic exploration and production so we would not be so dependent on imported sources of oil. And that is the principal difference. We wanted to focus people on that issue to make sure that they were making a conscious decision about the approach we were going to use.

Senator LUGAR. Would you comment further on these other potential uses: timber harvesting, recreation, roadbuilding, and wildlife habitat?

Mr. CASON. Yes. Senator, all of those uses are very important uses of the public land. We have a literal plethora of statutory mandates that we have to administer for the public lands, whether you consider Bureau of Land Management lands or the Outer Continental Shelf offshore or in the Department of Agriculture, Forest Service lands, we have a number of statutes that ask us to administer the law to protect these kinds of values and do the best that we can to balance the uses that we allocate to each.

I think each one of those are important. And the difficulty that we have is trying to make the determination of how much we are

going to allocate of the resource base to each one of those particular uses. And I think the key area in terms of administering the programs is to try and have a sensitivity to the impacts that man creates when he enters into any one of these activities, and that we try to mitigate against it and try to make opportunity as widely available as possible.

Senator LUGAR. Thank you very much. Thank you, Mr. Chairman.

Senator FOWLER. May I follow up one question, Mr. Chairman? I know I am out of order, but I ask permission of my colleague. Senator Boschwitz is next, and he won't mind, would you?

Senator BOSCHWITZ. Well, just make it one.

Senator FOWLER. Mr. Cason, along the line that Senator Lugar was asking you, specifically on national forests, as you know, the Forest Service has a policy in some national forests of allowing below-cost timber sales, timber harvesting.

Is this, in your opinion, fiscally responsible?

Mr. CASON. Senator, from a pure fiscal point of view, it probably is not. But I think there are a number of—

Senator FOWLER. How can we afford to do it in light of what you just said about our natural resource base?

Mr. CASON. Senator, I think one of the other things that needs to be considered in addressing the below-cost timber sale issue is the other factors that enter into a decision as to whether to offer a timber sale or not. And there are a number of other factors.

We have some mandates that require we pay attention to local economies, that we look at local industry requirements, that we have rural development opportunities, that we make decisions based on biological grounds or habitat manipulation grounds. We have official wildlife objectives we want to meet.

Senator FOWLER. Well, just answer me this because I am taking Senator Boschwitz' time. And again I apologize to the committee. But these are very specific questions.

Should we, in light of your answer, should we subsidize companies, private companies harvesting timber on public lands that vary? That is what you are going to be dealing with. Should we do that?

Mr. CASON. I think we should be hesitant each time that we do that, and we should make sure we have clearly in mind the reasons that we have for doing it in the cases that we do.

Senator FOWLER. And those were the reasons you were giving me that if we just decided we wanted to keep an economy going, we will continue to subsidize?

Mr. CASON. Senator, from my point of view, I think this is an issue that we need to address as an administration policy. But I think, in trying to formulate that policy, we need to take a close look at the circumstances in which below-cost timber sales occur, and address them on their individual merits and, in the long run, attempt to move away from below-cost timber sales while providing some kind of alternative to those who are adversely impacted by a new policy.

Senator FOWLER. I yield to Senator Boschwitz.

Senator BOSCHWITZ. Thanks, Mr. Chairman.

Senator FOWLER. Thank you, really.

Senator BOSCHWITZ. Let me turn the questioning to a different subject.

As much as I am fascinated by the spotted owl and other things, I think that one of the principal environmental issues that we are going to be addressing in this committee, particularly in regard to the 1990 farm bill, will be the use of agricultural chemicals. And since you are in charge of the Soil and Conservation Service, as I understand it, the use of chemicals in agricultural production will come within your bailiwick.

I want to ask you, as you look at that, if you would tell us in what direction you feel we should go. And as you look at water quality, in rural areas particularly, and it reaches into the general water supply as well, how we can improve that situation.

Clearly, there is going to be considerable pressure. The Secretary of Agriculture was just in Minnesota speaking about that. We came back to Washington together yesterday morning. He, I might say, continued very warmly and enthusiastically, to express his support for you.

But as important as some of the other issues are that have been discussed, I think that the use of chemicals in agriculture are going to become a source of considerable debate here. And I would like to ask what your position and views are with respect to that?

Mr. CASON. I appreciate the opportunity to do that, Senator Boschwitz.

I think the use of agricultural chemicals is a very difficult public policy issue that we have to address. It certainly has a mix of pros and cons associated with it that we need to understand fully before we make any kind of a decision on a direction that we need ahead.

I believe we are in a situation that has become apparent that the use of chemicals on farmlands across the country and, in some cases, forest lands across the country, present us with unresolved problems of residue running away from the areas that it is applied. And that residue is collecting and potentially creating a water quality problem.

On the other side, obviously we have to weigh the impacts of being able to produce an adequate supply of food that is healthy and attractive and is readily consumable.

The pesticides that are applied have a functional purpose that we also have to take into consideration. I think the Senators on this committee, certainly the chairman and Senator Lugar, and others on the committee, have taken a lead in establishing a congressional direction for the Department of Agriculture by suggesting that we need to be very diligent at looking at the possibilities for low-input approach, a sustained agriculture approach, commonly referred to as LISA.

I think that concept is a very good concept because it points us in a direction that we need to be more diligent to make sure that the chemical we do apply are applied as efficiently and effectively as possible, and we reduce any residual problem that occurs from them. We need them, but we should be careful as possible with them.

Senator BOSCHWITZ. Do you feel that chemicals should be reduced then in agriculture, as we practice it today; and which chemicals most particularly concern you?

Mr. CASON. Senator Boschwitz, I think that the long-term direction that we should head toward is a reduction in the chemicals that we put on the face of this Earth. At this point, I do not know which chemicals are worst offenders; the ones that pose the greatest health risk to our country and to the world.

I think those are the areas that we should start with first. I think that the critical issue that we have to face is the development of technologies and the ability to transfer those technologies out to the American farmer, who needs those chemicals and be able to describe much more efficient ways of applying the chemical and develop technologies for maintaining the chemical for where it is supposed to be.

And with the development of those technologies, I think that we can take aggressive action to try and reduce the chemicals in the long term.

Senator BOSCHWITZ. Another one of the over arching, or most important environmental problems, in my judgment, is the greenhouse effect. Certainly the forests have quite an impact on that, and also the agricultural economy has an impact on that.

I wonder if you have given some consideration as you approach this job, you certainly have had time to give a lot of things consideration—

Mr. CASON. Yes, 1 or 2 days.

Senator BOSCHWITZ [continuing]. How you can impact it? Certainly the expansion of forests impacts it very positively. The use of agricultural chemicals and other things that you will be involved with has some, but that is not the principle negative impact of the greenhouse effect, but it has some impact on the greenhouse, as well.

I wonder if you could address that issue, and how you would see yourself, as Assistant Secretary, dealing with that?

Mr. CASON. Senator, the prospects for a greenhouse effect, a global warming effect, are a very serious concern to a number of people across the country.

With the greenhouse effect, we have the potential for a great amount of damage to this closed microcosm that we call the Earth, and we have to be very careful to make sure that we are on top of the issue, and that we are doing things constructively to try and prevent any long-term impacts.

I think as Assistant Secretary for Natural Resources and Environment, at the Department of Agriculture, if confirmed, I would have an opportunity to do positive things to try and address the problem.

Certainly, you have recognized and a number of the Senators on the committee have recognized, that our possibilities for planting trees, across the country and across the world, offers at least opportunities to address the problem in some fashion, because trees take out carbon dioxide and other gases and produce oxygen.

I think we have opportunities with the international aspects of both the Soil Conservation Service, and the Forest Service, to do a better job of spreading the technical information that we have available and environmental sensitivity across the world to other countries.

And I think one of the things we would look to is trying to augment the international capability of both agencies so that in cooperation with AID or the State Department, or other organizations, we would be able to supply them technical expertise to send to other countries to spread the technology of how we could be more environmentally sensitive, in how we manage these programs, while still meeting the short-term economic goals that foreign countries have to pay attention to. I think, with these kinds of options, we can do a better job on the global warming area and do something positive.

Senator BOSCHWITZ. If you go out to my State, or to Senator Conrad's State, and talk to farmers—one of their really strong feelings these days are the swampbuster provisions of the 1985 farm bill, and the fact that if there is a low spot. For some years we were telling farmers they should drain the land and we will help you pay for tiling and so forth, and we encouraged one course of action, and then we, as we often do, reversed the field. Now, because the low spot may appear on a picture in a soil conservation picture of that land, they are not allowed to tile or they are not allowed to drain.

This is a matter of very strong feelings in certain parts of our States, and particularly, when it is an acre or an acre-and-a-half piece in the middle of a field that does not allow a farmer to efficiently use his land.

He, of course, feels it is his land, and why are people imposing upon him.

Would you say that these small potholes, or these small pieces should be allowed to be farmed, and what will be your position on the swampbuster provisions with regard to the small potholes in the middle of fields?

Mr. CASON. Senator Boschwitz, the implementation and aggressive enforcement of swampbuster provisions of the 1985 farm bill is a very important issue and it is a difficult one.

Certainly, you have heard from some of your constituents about the imposition caused by a wetlands determination in the middle of a field and what that means to them; it makes life tougher. Just as equally, we have to recognize that, as a nation, the Congress of the United States and the administration implementing, has to have some kind of national goal, a direction that we want to head.

President Bush has indicated that he is advocating a no net loss of wetlands policy position and I would strongly adhere to that. And I think that the thing that we need to do, as we go through the rest of this year and begin developing the 1990 farm bill is have a lot of discussions with members of the committee and some of our constituency groups to see what the practical implications of the current farm bill provisions are and arrive at a conclusion as a national policy about how best to implement their provisions for the future.

I think, at this point, we have to be very diligent to make sure that we maintain the wetlands as much as possible and try to find the best implementation procedure.

Senator BOSCHWITZ. Thanks, Mr. Chairman.

Senator FOWLER [presiding]. Mr. Cason, just one other followup to Mr. Boschwitz' question about LISA. There have been some con-

cerns expressed to the committee, by those involved in low-input at USDA, that LISA considerations, along the lines that you describe, are being left out in water quality initiatives, that are now being developed and planned at the Department.

If confirmed, would you commit to us to include the LISA considerations in the future water, whatever water quality initiatives come out of the Department?

Mr. CASON. Yes, sir.

Senator FOWLER. Mr. Conrad.

Thank you, Mr. Cason.

The CHAIRMAN [presiding]. Senator Gorton, we have been trying to go back to the order that people arrived here, so that Senator Gorton would be next, and then those here, Senator Conrad would be next after that.

Senator GORTON. Thank you, Mr. Chairman.

Mr. Cason, with regard to the series of questions on below-cost logging sales which Senator Fowler asked you, is it not true that a large share of the Forest Service costs with respect to timber sales, particularly in the West, derived from environmental considerations; considerations of where logging will create the least environmental damage, and enforcement of environmental laws, so that logging and timber production can be conducted in the most environmentally sensitive fashion?

Mr. CASON. I believe that is true, Senator Gorton. The Forest Service has been working with the GAO to construct a formula approach or a way of recording how much it costs for each timber sale, and recording the amount of receipts that come to conclude whether a sale is above or below the break-even point.

And I think in arriving at that, they include all of the costs, which include environmental compliance.

Senator GORTON. And does it not somewhat stretch the normal definition of subsidy to say that those environmental costs are a subsidy to the company and to the people who utilize the timber?

Mr. CASON. Certainly that is a consideration and conclusion that can be drawn, Senator Gorton. I think we are in a situation that many government programs, if evaluated merely on how much money they make and how much is spent on them, will end up in a below-cost situation.

It is my understanding that the timber program of the Forest Service and the Minerals Program of the Forest Service, both provide positive returns overall, and I think that is something that should be brought into the public debate on the issue.

Senator GORTON. And, to the extent of course, that we restrict logging on Forest Service, or other federally owned land, we do not end that logging do we; we just see to it that it takes place on State lands, or private lands, or for that matter, in other countries in which environmental considerations rate far lower on the priority scale?

Mr. CASON. I believe that is very true, Senator Gorton. The reason that we have logging on national forest land, or any other land, is because we end up needing the wood products. We do not do it for the fun of it and it is because people need homes, and they need the building materials to have domiciles, and we use it for paper products, and plywood and other things.

And it is necessary to find the wood products somewhere or find some alternatives and that is why we have a timber program.

Senator GORTON. On a different but allied subject, it is difficult for me to imagine, Mr. Cason, a more difficult mandate for an administrator, than the multiple-use mandate for our national forests, with all of the, at least, potentially conflicting uses of national forests.

How do you plan, what are your thoughts on articulating that multiple-use mandate for our national forests, now that you have had some time to think about it? And does that differ, in any respect, from present, or past or perceived missions of the Forest Service?

Mr. CASON. Senator Gorton, you are absolutely right that the multiple-use mandate is probably one of the toughest to administer. If you have an agency that has essentially a single mandate, then it becomes a lot easier to make a decision. But when you have an agency that requires you to recognize a whole host of possible values, and requires you to balance the allocation of lands to that whole host of possible values, it makes it very difficult.

My perception of the direction of the Forest Service, is that I do not think that it will change substantially under my leadership. I think that they have done a number of really wonderful things, with their rise to the future program and threatened and endangered species programs and their timber programs.

And I think that what we will try to do is continue to assess, from each member of the committee, and yourself, any additional direction the Congress might have on where we ought to go.

Fortunately we are in a position that we have a public participation process with the Resources Planning Act requirements, where we can get some assistance in setting the direction from the Forest Service from our public. And the Forest Service is going through that right now.

Senator GORTON. A number of people who have corresponded with me on your nomination, from the State of Washington, and I suspect a large number of people from other States as well, have expressed concern over your association of the Department of the Interior, with the former and rather famous Secretary, James Watt.

Could you explain or compare your public land use philosophies with those of Mr. Watt?

Mr. CASON. Well, I think Secretary Watt ended up having the same kind of multiple-use mandate that I have lived with at the Department of Interior. And the same kinds of mandates that are available to the Department of Agriculture.

I could not speak to how Jim Watt and I are the same or different. He was the Secretary of the Interior and I was a Special Assistant to the Director of Bureau of Land Management and we really did not have much time to sit around and chat and see where we were.

So I could not really answer the question. I do not know Jim Watt that well. The best I could say is that I recognize that Congress has given us a multiple-use mandate and to the best of my ability, and in consultation with the committee, I will try to carry out that multiple-use mandate.

Senator GORTON. You recognize, obviously, that your nomination has been controversial. You have groups, from a large number of groups, actively supporting you and you have a number of others who are actively working against you.

This is sort of a two-part question, and try on both parts of it.

Tell me what groups or interests, by and large, seem strongly to be supporting your nomination and then tell me—an answer to an even more difficult question for me—and that is, how will you deal, assuming that you are confirmed, with groups, organizations, and individuals who have opposed your nomination?

Mr. CASON. Senator Gorton, as evidenced by the number of people in this room, there seems to have been a lot of interest in my nomination and prospective opportunity for Jim Cason, if confirmed, to go to the Department of Agriculture. In the first part of your question, you were referring to who was supportive. I think the key in the who was supportive piece of it is generally natural resources groups and farming organizations and some professional societies, because generally I've had good experience with those organizations in the past or they have taken the opportunity to come and learn who Jim Cason is and decided that I am a reasonable person.

I think to the extent that there's been individuals who are concerned about the positions that I might take and that have voiced that concern, I would work with them—in answer to the second part of your question—exactly the same as I will work with anyone else. I have had an open-door policy at the Department of Interior, and I will continue to have an open-door policy at the Department of Agriculture, if confirmed. And I believe that meets with the expectations of President Bush and Secretary Yeutter that anyone should have an opportunity to come in and express their concerns or express their opinions. Frankly, I'm of the mind that I have no lock on the good ideas; that anyone coming in the door may be able to give us a better way to do the job.

Senator GORTON. Do you believe that you will be able, fairly and objectively, to deal with ideas presented to you by the groups and organizations who have strenuously opposed your nomination?

Mr. CASON. Yes, sir, I do. I am not concerned that I, personally, will have any problem being able to be receptive and listen to the concerns and desires of these groups. I think like any group and all groups that come in to meet with a manager within the executive branch or ultimately with Members of the Senate or House, we listen to a variety of opinions about how we should carry out the duties that we have. And it's up to us to listen to those carefully to glean from them the best ideas possible and then to apply those ideas within the statutory mandates that we have and the judicial constraints we have.

Senator GORTON. Mr. Chairman, I note that it is after noon. This is probably a reasonable end to a first round of questions.

The CHAIRMAN. I don't want to cut you off. If you had another question, feel free to ask it.

Senator GORTON. I can defer now and come back this afternoon.

The CHAIRMAN. Senator Conrad.

Senator CONRAD. Thank you, Mr. Chairman.

Mr. Cason, your nomination has certainly stirred controversy. I'm just looking through the letters I've received, both for and against, from inside my State and outside my State. The one allegation that I think deserves attention, serious attention and concerns me the most is an allegation that you participated in giving away Federal lands. And I'd refer you to a GAO report entitled "Federal Land Management: The Mining Law of 1872."

In that report, it talks about a widening gap between Federal return and land values. It indicates public and congressional interest in the patent provision was rekindled in 1986 when patent holders sold 17,000 acres of oil shale land to major oil companies for \$37 million. Just weeks earlier, they had patented the land and paid the Government \$42,500. There are other examples that are in the GAO report of the Federal Government selling land for a fraction—and I mean a fraction—of its real value.

I would then refer to an article that appeared in the Denver Post late in 1988. It says, "Barely a month before leaving office, the Reagan administration has resurrected a controversial program that gives oil shale lands in Colorado and Utah the energy companies and land speculators for just \$2.50 an acre."

In that article, they quote you, and at the time you were the Assistant Interior Secretary for Land and Minerals, "The same Congress has adjourned without enacting oil shale legislation. And the Department feels compelled to carry out its duties."

And they further quote you as saying, "The shale claims outstanding will be reviewed to determine whether a minimum amount of work has been done at the site and other legal requirements have been fulfilled. Title to those claims found to be valid will be granted expeditiously."

My first question to you is, is this an accurate reflection of what occurred?

And, second, did you view it to be in the public interest to turn over those lands if, in fact, the Government was recovering a fraction of the value, the market value?

Mr. CASON. Senator Conrad, the oil shale issue is tremendously complex. And the first thing that is probably important to point out is this is an area where law tells us to do one thing, and it has become publicly difficult to do what the law requires us to do, or publicly unpopular.

The 1872 mining law granted rights to individuals to file oil shale claims in the Western United States. That right was ended in 1920 with the passing of the Mineral Leasing Act. And Congress, at that time, grandfathered all of the existing oil shale claims and allowed them to continue under the 1872 mining law.

The issue that we had in the Department of Interior was a responsibility to follow the 1872 mining law to address patent applications that had been filed under that law and to process those patent applications according to the law, which we did.

The claimants, or the patent applications, were challenged in court. And they were challenged a number of times over the last 70 years in various forms, four times reaching the Supreme Court. And the accumulated administrative history and judicial history placed us in a position that, finally, Secretary Don Hodel made a decision on a group of claimants which you are referring to, to

issue a modified patent, or it was actually issue a full patent, but as a part of a negotiated settlement wherein the Federal Government got back a lot that they normally do not get in a patenting situation.

It happened as a result of a District Court judge making a determination that, in fact, the Department of Interior was not on solid ground for challenging these claims and urged us strongly to settle with the claimants, which we did.

Senator CONRAD. Well, let me ask you if this is accurate, that they quote you as saying, "The shale claims outstanding will be reviewed to determine if the minimum amount of work has been done at the site and other legal requirements have been fulfilled. Title to those claims found to be valid will be granted," and they quote you here, "expeditiously."

Do you recall using that word, and do you recall if that accurately reflected your view?

Mr. CASON. Senator, I do not know whether the term "expeditiously" was there or not. I think the quote originated in a letter that the Department of Interior sent to Congress, informing Congress that we believed we had a statutory responsibility to process these claims under the 1872 mining law.

The history on that was that the Department had cooperated with Congress for a couple of years in either a congressional moratoria on appropriations, delaying our processing of patents, and a subsequent self-imposed moratoria on processing patents to allow the Congress an opportunity to address the issue and perhaps give us a different public policy. When that different public policy was not forthcoming, we still had the responsibility to process the patents under the law that we currently had. And what we tried to do to ensure that no one in the process was blindsighted, including Congress, was to send the congressional committee who was investigating the issue a letter to inform them that we had this issue on our plate, and we were moving according to current law so that if Congress wanted to change our operating instructions, they had an opportunity to do that.

Senator CONRAD. Did you seek at any time you were in the position of Assistant Interior Secretary for Land and Minerals Management, to seek a change in the law?

Mr. CASON. Yes, sir, I did.

When it became apparent that the different perception of public policy was an issue, we sat out—my boss, the Assistant Secretary, and myself—to put together an alternative proposal. We drafted legislation, had it cleared by the administration, and forwarded for congressional consideration. That legislation would have changed the current law and given us a different set of instructions on how to accommodate the oil shale claimants and do a better job of accommodating contemporaneous public opinion.

That administration proposal was never acted on but, in fact, we did try to do that.

Senator CONRAD. Well, let me ask this, does it not seem to raise at least a question of perception, create a sense that people are trying to do something quickly in the last month of an administration when something as controversial as this is done where the

Federal Government is getting a fraction of the value of the lands that are being sold?

Why would you not wait for the next administration to try to deal with this issue if you felt that it was not in the public interest to be selling the land at a fraction of its value?

Mr. CASON. Senator Conrad, we are responsible for balancing the interest in this particular case of a public good and a private interest.

What we had just finished at the time of sending that letter to Congress was almost 2 years of either appropriations moratoria or self-imposed moratoria on processing these claims.

The claimants, too, had private property rights here that were being impacted by our Government decision. And we had a responsibility under the 1872 mining law to process the claims. We delayed—

Senator CONRAD. Did you have a responsibility to do it expeditiously?

Mr. CASON. Sir, I think we delayed for 2 years, and the continued processing of the claim was expected to take many months. And so the term "expeditiously" would have meant several months in the future at best.

Senator CONRAD. Maybe one final question, Mr. Chairman.

In your judgment, was it in the public interest to sell lands for \$42,500 according to the GAO report, when weeks later, the same land was sold for \$37 million? Was that in the public interest?

Mr. CASON. Senator Conrad, I think it is in the public interest to assure that we properly address private property rights. I think, in this particular instance, I would not even think about defending a situation where public land were patented for \$42,000, and it was worth \$37 million.

The issue that is there is that is what the law required us to do, and we adhered to the law as it was written instead of imposing our contemporaneous judgments as to whether that was right or wrong.

Senator CONRAD. Let me just make the observation that I hope if I were to find myself in that similar situation that I would have done everything in my power to try to get the law changed before selling land that was in the public domain for \$42,000 which was worth \$37 million. Something is radically wrong when we sell out of the public domain something for \$42,000 that is sold weeks later for \$37 million. That is radically wrong. And I must say I am troubled by that.

Thank you, Mr. Chairman. I will defer any other questions until later.

The CHAIRMAN. Mr. Cason, after we do come back this afternoon, I intend to follow up on the area that Senator Conrad has talked to you about, because there is a dispute whether that is the way the law should be followed, and also there is certainly some questions about your own eagerness in using that part of the law.

Senator Kerrey it is your turn to ask questions, or wait until this afternoon.

Senator KERREY. I have a conference committee meeting this afternoon and I am not going to be able to come back.

I have just two or three questions that I could submit for the record.

The CHAIRMAN. Whichever you prefer.

Senator KERREY. Let me ask two of them because they relate to our conservation programs.

The CHAIRMAN. OK.

Senator KERREY. These are fairly current issues for me, and rather important. The first one has to do with the situation where a landowner has several pieces of property. The landowner has the options to put parcel (A) into the program and satisfy all the conservation compliance requirements.

On additional parcels, the landowner has the option not to comply with conservation requirements at all. Yet, the landowner will remain eligible on parcel (A), even though all of his land is not in compliance.

By contrast, if I am a tenant and in exactly the same situation—let us say that I am leasing all three pieces of land—and I am only able to get the owner of one parcel to make improvements sufficient to satisfy the SCS; then I am not eligible for farm program payments on all of the property I farm. I must get all of the property owners to agree, otherwise, I am not eligible on any of it.

I would appreciate an almost intuitive rather than a legal response to that situation. I would like to hear if you think that that sounds either fair or consistent with the objective of the conservation compliance requirements, which I happen to support fully, by the way.

Mr. CASON. Well, Senator Kerrey, I too, support the cost compliance provisions of the 1985 farm bill. I guess I do not know, at this point, what the technical response is. I think it would be intuitively, it is reasonable to expect that both the landowners and the tenants do everything possible to assure that we are having good compliance with erosion control procedures and water quality procedures. And to the extent that we can do anything to assist, either a tenant or a landowner, to do that, that we should try as much as possible to be available and to provide assistance.

Senator KERREY. Well, I will submit the detailed question so that you can respond to the technical issues.

Mr. CASON. Thank you.

Senator KERREY. I must tell you that one or the other situations is not right. Either USDA should say to the person who owns two farms that they both have to be in or you cannot get benefits on either one. Or, you have to say to the tenant that we are going to apply the same rules to you as we apply to the person who owns the property.

Mr. CASON. Intuitively, that makes sense.

Senator KERREY. Yes, and I would appreciate your looking at the detailed question and giving me your reaction to it.

My second question has to do with the CRP. As I understand the situation, the CRP contract is not secured by an easement on the land. Instead of following the land, the CRP contract follows the landowner and is secured by the landowner's personal liability.

If I have cosigned a CRP agreement and I am leasing the land, and my landowner goes broke, and the bank takes the land back

and sells it, and the new owner ignores the contract, I, as a tenant, have to pay all costs associated with breaking the contract.

Again, I find something to be inherently unfair about that. I do not expect an answer right now, but I would appreciate very much your looking at this issue prior to our taking a final vote. I am not, by the way, predisposed to vote against you, based on the way you answer this question. I am genuinely trying to get an answer to the question, however, because I think the policy, right now, in both instances, is not fair.

Mr. CASON. Thank you, Senator Kerrey.

The CHAIRMAN. Senator Boschwitz, do you have any further questions?

Senator BOSCHWITZ. No, Mr. Chairman, thank you.

The CHAIRMAN. Senator Lugar.

Senator LUGAR. I will have other questions this afternoon.

The CHAIRMAN. All right, then, why do we not stand in recess until 2 p.m., and I guess your parents probably would not mind the break either.

[Whereupon, at 12:22 p.m., the committee was in recess, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. Ladies and gentlemen, the hearing will come to order.

Senator Baucus, you have not had a round.

Senator BAUCUS. Yes, Mr. Chairman, thank you, very much, for recognizing me, and I apologize to the members of the committee. I am chairing a hearing on the Clean Air Act.

Mr. Cason, as you, I think, know, last year the Congress passed a Montana wilderness bill; a bill that was vetoed by the President.

I am wondering if you could tell me your views on that bill and what recommendation you would have made on that bill, if you were in a position to which you are now nominated for.

Mr. CASON. Senator Baucus, I did take the opportunity to look at a number of materials about the Montana wilderness bill. I did look at the bill and I looked at the letter that Secretary Lyng sent on the bill, and I looked at the CRS report on the bill.

And I think that Secretary Lyng and the last administration made a decision on the bill that they believed that the acreage included exceeded that in the land use plans. I do not know and would not speculate as to whether that was the right decision or the wrong decision.

I think the appropriate response for me, at this point, would be to take a fresh look at the Montana wilderness bill and take a look at the CRS report and the conclusions that it drew that the impacts associated with the Montana wilderness bill are minimal and then begin the dialog anew, with an open mind to find out if we could reach a conclusion that is mutually acceptable to everyone in this process.

Senator BAUCUS. Have you seen the recent CRS report on that bill?

Mr. CASON. Yes.

Senator BAUCUS. And what was its conclusion?

Mr. CASON. I think the CRS report concluded that generally there were very minor impacts to local employment and in future employment opportunities, as a result of any kind of passage of the Montana wilderness bill as it was written.

Senator BAUCUS. Do you agree with that conclusion?

Mr. CASON. Senator, I really do not know enough to agree with the conclusion. It seemed like it was a pretty exhaustive study and I have not had the opportunity to look at all the data and the land use plans that were the basis of the Forest Service opinion that Secretary Lyng used.

But, certainly, I think that one thing that needs to be done is to go back to the land use plans and the conclusions that were drawn from that and compare them, point-by-point to the CRS response and find out where the discrepancies are in the opinions.

And, then, with your advice, and that of the other members of the delegation, try to work out what would be the most reasonable way to solve this problem. I think there are some very pristine areas involved there; certainly I think it is in the order of 800,000 acres that the Forest Service, itself, recommended to be passed into wilderness.

And I think what we need to try and do is to narrow down the issues of the discrepancies, and try to reach a conclusion on them.

Senator BAUCUS. How many wilderness bills, passed by the Congress, agreed to by both Members of the Senate delegation, have been vetoed by a President?

Mr. CASON. I am unaware of any, except this one.

Senator BAUCUS. There is a reason for that.

Is there a timber supply problem facing the forest products industry in the Pacific Northwest?

Mr. CASON. Yes, sir, I believe there is.

Senator BAUCUS. What is the cause of that timber supply problem, in your view?

Mr. CASON. Senator Baucus, I think there are a number of causes to the timber supply problem. And when you take a look at the environment that we are in, as public policy stewards on public land, and if you look at the West, you have a composite of States composed of small-to-moderate holdings of State and private land.

And when I say that, I am talking about, it may be between 0 and 60 percent State and private land; and the same kind of amount of Federal land. That you have such large Federal landholdings between the Bureau of Land Management and the Forest Service, in each of those States, that your opportunities may be constrained by the results of public opinion moving.

I think that in the Pacific Northwest we have a situation where there is a growing public sentiment that we are taking too much of the natural resources, off the national forest and that public sentiment is being reflected in a number of ways; either through land-use plans, through NEPA compliance documents, through litigation, through new legislation. And each of those are creating an environment where the available supply is being constrained.

Senator BAUCUS. Do you agree with that public perception? Is that public perception accurate?

Mr. CASON. I think the public perception is not something that I would measure as either accurate or inaccurate; it is. And the basis

of it is, there is a growing public perception that we need to spend more time paying attention to other things on our public lands, other than the domestic commodity production.

Senator BAUCUS. Are "appeals" a problem; a factor in the timber supply problem?

Mr. CASON. I think appeals are a factor; appeals and litigation, in that you have a situation where a lot of things occur in our public land use planning process, and the NEPA compliance process to try and begin setting a stage.

The appeals and litigation come after that basic stage, where you end up creating an uncertainty in the environment; industry does not have a certainty; the environmental community does not have a certainty; and you have the flux that is created by the appeals or litigation.

I have seen that independently the appeals have been reviewed to find out whether they were meritorious or not and the conclusion was that they were all of merit.

Senator BAUCUS. Do you agree with that conclusion?

Mr. CASON. I think any appeal ends up having merit, because underneath that appeal is someone who believes that their point of view was not appropriately reflected in whatever decision was made.

Senator BAUCUS. President Bush would like to be known, in part, as an environmental President. If you were confirmed, what environmental initiatives would you start so that, on balance, the Department of Agriculture would be more environmental than the previous administration?

Mr. CASON. Senator Baucus, this is one of the areas of the Federal Government where there is ample opportunity, great opportunities to do things that would be conceived of as "proenvironment" or "environmentally sensitive."

I think within these two agencies, we would continue the work that has been begun and has been around for a while in soil conservation and that we would aggressively pursue the conservation planning aspects of soil conservation aggressively; the swampbuster and sodbuster provisions; and do what we can to provide a foundation later on at the cessation of those programs.

Senator BAUCUS. But what in the national forest?

Mr. CASON. In the national forest area, Senator, I think that I am supportive of some of the programs that the Forest Service has started in terms of recreation. I think their partnership programs and cost-sharing programs are good. I think the rise to the future program is good.

Senator BAUCUS. What about wilderness?

Mr. CASON. I think in the wilderness front, the Forest Service, as I understand it—

Senator BAUCUS. Is there room for more wilderness?

Mr. CASON. I believe so.

Senator BAUCUS. In Montana?

Mr. CASON. That is certainly a possibility.

Senator BAUCUS. I want your view. You have looked into this because you were notified in advance that I would ask you questions on this subject.

Mr. CASON. Yes.

Senator BAUCUS. So I would like your view.

Mr. CASON. My view, at this point, is certainly a Montana wilderness bill is a possibility. And, as I mentioned—

Senator BAUCUS. Possibility? I am asking for your view. Is there a need for more? Let me ask the question a bit differently.

As you know, there are about 6 million acres of roadless national forest lands in Montana. Does the passage of a Montana wilderness bill, which allocates acreage, wilderness for certain acreage, released back to the plans for others, would the passage of last year's bill, which was about 1.4 million acres of wilderness and the balance basically back to the plans? Would that help or hurt the Montana forest products industry in your view?

Before you can answer that question, the Forest Service says it will help.

Mr. CASON. I think I understand the Forest Services' position, and if I articulate this correctly, I would agree with it. What we have now is a situation where we—

Senator BAUCUS. Do you agree with the Forest Service position that passage of a bill would help the Forest products industry?

Mr. CASON. I believe as a policy position that yes, it is important that where lands are under study and cannot be accessed in any fashion, where uncertainty exists and the designation of lands and the eventual use of those lands is in question, that it is important to try and resolve that uncertainty and make a decision. And in that way I think that the Forest Services' position is—a Montana wilderness bill of some fashion would be helpful and I would agree with that. I think we need to bring these issues to conclusion with certainty so everyone knows what the playing field is.

Senator BAUCUS. What a lot of environmentalists, as you know, are not particularly enamored with this—your selection. Can you give to them—to me and to them—very definite environmental actions that you have taken in the last 2 or 3 years in whatever positions you have held?

Mr. CASON. Yes, sir, I can.

Senator BAUCUS. And what are they?

Mr. CASON. Senator, I personally have supported wilderness designation of four cases.

Senator BAUCUS. Specifically where?

Mr. CASON. It's Humbug Spires in Montana, I believe, in fact I've got a little note here.

Senator BAUCUS. I don't recall Humbug Spires in Montana.

Mr. CASON. I don't believe it's been passed. What we did is the Bureau of Land Management under section 603 of FLPMA is required to conduct wilderness study on about 24 million acres of its land and when Congress passed the FLPMA in 1976, it had a provision that we had instant study areas that were created by the bill and those were previous primitive or natural areas. And we finished the instant study areas about 4 years ago and reported to the President our recommendations from the Department of the Interior, which I supported, and in that recommendation was Humbug Spires 8,791 acres in Montana.

Senator BAUCUS. That would be BLM land, wouldn't it?

Mr. CASON. Yes, it's BLM land. I haven't been in a position to make any recommendations on Forest Service land, having not worked with the Department of Agriculture.

Senator BAUCUS. Can you think of any other zinging, strong environmental actions you've taken—

Mr. CASON. Yes, sir.

Senator BAUCUS [continuing]. Because of your strong commitment to the environment?

Mr. CASON. Yes, sir.

Senator BAUCUS. What are they?

Mr. CASON. Finishing out the wilderness areas we recommended Great Rift in—as a wilderness area in Idaho, and the Powder Horn area in Colorado; and we recommended Scab Creek in Wyoming, four examples where we did support wilderness designation.

Senator BAUCUS. I don't want to take too much of everybody's time here, but I have a hunch, I don't know, some of those may not have been very controversial. Can you name some that were definitely controversial and you were taking—at great risk, a proenvironmental stance? Are there any?

Mr. CASON. I feel like I end up at great risk every time I go to work, but yes, one area that was very controversial that we decided on was the process that we used in the Outer Continental Shelf. We in the Department of Interior decided to set off millions of acres in subarea deferrals because we wanted to protect sensitive marine environments and the oil and gas industry was pretty frustrated that we did that. They didn't believe that that was an appropriate strategy on our part or an appropriate decision, but we made the decision anyway because we wanted to protect those areas.

I've also taken actions on authorizing petitions for withdrawal of property to protect sensitive archaeological values or cultural values or scenic values. I've recommended additions of National Historic Trail System. I've recommended passage of legislation designating areas as wild and scenic rivers. There have been a number of things that we have to do in the Department of Interior with our multiple-use mandate to manage all the way from full preservation to full development.

And we have a plethora of laws, just like the Department of Agriculture would have, where we have different kinds of mandates for different kinds of situations and I think that if a person looked across the board at all the decisions we've made you would find some at each end of the spectrum and everywhere in between.

Senator BAUCUS. If you've done all these things, what explains then a lot of the objection to your nomination? What does it all come down to? I mean, you must have thought about this.

Mr. CASON. Well, I thought about it once or twice.

Senator BAUCUS [continuing]. What explains it? Why is it if you've done all of these things and you think you're a fairly reasonable person and why is it that there's such a group that has such a contrary view, what explains it?

Mr. CASON. Senator Baucus, I'm not sure how I would explain the reaction. I think, what I believe, in the process, somewhere a person, maybe two people, decided to take a look at the 7 years of record that I had at the Department of the Interior and pull together a package of material explaining who Jim Cason was.

And, I think that person, whoever that person is, didn't do a very thorough job of taking a look at all of the decisions we made under our multiple-use mandate. And then, I believe what happened after that is before anyone bothered to check the full record, people reacted on it and reacted adversely, because that's all the story that was told. I think it is unfortunate, but I think that a full examination of my record will reveal that we weren't totally one sided, that we had a very broad mission that included a lot of considerations and that in fulfilling that mission, we made a lot of decisions that try to balance out the interests of the various parties that we had.

I think instrumental here is a concept that—since the nomination has been forwarded, we have talked to our Solicitor's Office and found out that I have never been investigated in any way or litigated in any way. We talked to our IG's office, and nowhere in any part of the process has anyone come forward to say what has been done is wrong in some fashion. And so I think what happened, in response to your question, is somebody got off on a tangent and was trying to make a point and the point certainly has been made.

Senator BAUCUS. I'm trying to find something. Why don't you say something that absolutely convinces me one way or the other and I'm still looking for that, frankly?

Mr. CASON. That's all right, I'm prepared right now. Senator Baucus, I'll sit here right before you and all of these people and I will pledge to you and to the Chairman and to Senator Lugar that I will do a good job of conservation in this job if I'm confirmed, that I believe in the conservation measures that must be taken to save the soil in this country, to do a better job with water quality. And that I pledge to you and the other members of the committee that I will do a good job of listening to the comments of the various constituency groups and do the absolute best I can in weighing those, to make sure that we're making good decisions, not only for today but for tomorrow, and that in each of the decisions that we make, we weigh the impact of man in the environment with the other impact on economic prosperity from the decision.

You know, I think that's the mandate that we have from Congress. I think that's the mandate that we try to operate under and I pledge to you right here in front of everybody that I will do a good job, if confirmed.

Senator BAUCUS. Thank you.

Mr. CASON. Thank you.

Senator BAUCUS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. As you know, Mr. Cason, I would hope that you would not belabor under misapprehensions. There were not only one or two people who have looked at your record and expressed concern. We have asked the staff of this committee and I might say that I look at the staff from both sides of the aisle as one of the finest committee staffs I've ever worked with in all of the different committees that I've served on during 15 years in the Senate and they have looked very very extensively at your past record. I think that they have been very straight forward in reviewing that record and have been very fair to you in doing so.

Mr. CASON. Mr. Chairman, I would apologize to the Chairman and to the staff if I left that kind of impression. The answer I was

trying to give is how did we get started. I think the aftermath, the committee, your office—

The CHAIRMAN. That's how I understood incidentally, that's how I understood your answer, but I just didn't want there to be any further misunderstandings.

Mr. CASON. I agree with you Mr. Chairman.

The CHAIRMAN. I want to followup on a number of things. This morning, if I understand your answer, you did not followup on or complete the staff report on the spotted owl because the matter was being reviewed by the Forest Service and the Fish and Wildlife Service. Now, I have gone back over my own notes from our meeting on June 20 and your written answers. You never mentioned that you stopped any action on the BLM's spotted owl report because of your reliance on Forest Service or Fish and Wildlife Service activities. In fact, what you did say is that you did not accept the report because it was not the type of report you wanted. Which is it?

Mr. CASON. Actually both are accurate. Senator, when we got the initial draft of the report or the initial feedback from the committee—our task force—it was not what we were looking for and when I say we, the Deputy Director of the agency, myself, the Assistant Secretary. I think that's probably my fault because I didn't do a good enough job of explaining what we were after, but we didn't feel like we got the kind of report that we needed in the process. And the kind of report that we needed was again laying out here's the criteria we need to assure the long term viability of the species, here's the criteria we need to know to assure that when we make these actions we minimize the adverse impact on the human environment and then go out and assess the quality of the information that's available, against these criteria to find out what we do and do not know.

Our intent when we started that process was to try and isolate out where we could construct a specific scientific study process to try and fill in some of the blanks. Along with this action, when our task group was doing what it needed to do, the Fish and Wildlife Service started its process, the Forest Service was in its process and when we got this initial response from the task group we walked out. I walked out of the meeting and I didn't know what to do, where to go with that report next. And I talked it over with my boss who was the Assistant Secretary at the time and we took a look at where we were at the issue, Fish and Wildlife was processing its stuff, Forest Service was doing its thing, we had the task group report sitting there and we took time and didn't do anything for a while to try and finish it.

Eventually, we got to the point, you've pointed out that it became a press issue, it became necessary to finish the document and we did tell the BLM to go ahead and finish it, it was reassigned to BLM and they proceeded to try and clean up the document, it was approved by BLM and then issued in draft.

The CHAIRMAN. You had warnings from your biologists the spotted owl would be endangered is that correct?

Mr. CASON. The team concluded in its first effort—

The CHAIRMAN. Were there biologists in there who warned the spotted owl would be endangered?

Mr. CASON. I think the team concluded Mr. Chairman, that there was some possibility that it would be.

The CHAIRMAN. Well, let me read from the report. It said, "if harvesting of old growth continues at current levels for 4 to 6 years, there is a high probability that the spotted owl will be federally listed as threatened or endangered. However, at that time there will be little suitable habitat available for management." That's a fairly clear warning that the spotted owl is going to be endangered.

Mr. CASON. That's very true Senator. That is what the report said initially. And when we had our conversation regarding that statement during the initial briefing, what was asked of the team is what's the foundation for drawing the conclusion that you have here? Can you support it?

One of the things that we get required to do in our managerial position is implementing a variety of statutes, is when we make decisions we're required to defend them. And in defending them we have to make sure that they are well founded and that we can defend them and in this particular situation we did ask the team, "Can you support this conclusion?" And the team had not done independent analysis to be able to do that. We had at the same time the Forest Service concluding something different and we were trying to figure out what's the right thing.

The CHAIRMAN. So, you say this morning that you did not follow-up on it because it's going to be reviewed by the Forest Service and the Fish and Wildlife Service?

Mr. CASON. It was being reviewed at the same time.

The CHAIRMAN. Do you have any memorandum or anything else saying that was the reason for holding off?

Mr. CASON. I doubt it, Mr. Chairman.

The CHAIRMAN. Do you say that reason is not inconsistent with saying the report just wasn't the type of report you wanted?

Mr. CASON. No, sir.

The CHAIRMAN. OK. Now Fish and Wildlife would be in the process of doing their report. Were they to act in a vacuum or were they to have the results of any of the efforts that your team had done up to that time?

Mr. CASON. The Fish and Wildlife Service process, Mr. Chairman, I believe is under the Endangered Species Act and as part of following up in their process they're required to go through a public comment opportunity.

The CHAIRMAN. Do you expect them in any way to use the draft report that had been done by BLM's top wildlife experts?

Mr. CASON. As I understand it Mr. Chairman, the report when finished in draft and signed off by BLM management was forwarded to Fish and Wildlife as part of their deliberations.

The CHAIRMAN. At that point you had no intention of going on with Fish and Wildlife; is that correct?

Mr. CASON. I am sorry, Mr. Chairman. I do not understand the question.

The CHAIRMAN. You said that you were—or at least my understanding is that all the reports were collected. There seems to be some difference in the testimony. Well, we have heard it was done at your direction. You do not recall.

If all the reports were just collected, was there any intent of sending any of them on to Fish and Wildlife?

Mr. CASON. Yes, sir, Mr. Chairman, there was. What we are dealing with is—

The CHAIRMAN. What was that intent? Were you going to send it yourself, or who?

Mr. CASON. No. Mr. Chairman, it was the responsibility of BLM, as the agency involved, to forward the materials. It was done, as I understand it, at the local level out in Oregon. Our BLM State office, who had part of the members of the team, forwarded the report to the Fish and Wildlife regional office in Portland.

The CHAIRMAN. Was that the same report that was gathered up after the meeting?

Mr. CASON. No, sir. As I understand it, the initial effort of the task group was reviewed by BLM management. It was put through their process, along with the comments I had made on the report, and the BLM management reviewed it and finally approved it in draft, and that draft report was forwarded to Fish and Wildlife.

The CHAIRMAN. But not the draft report you were working up in the meeting that we had discussed this morning?

Mr. CASON. Mr. Chairman, it is my understanding that the initial effort of the task group was later improved and that the document was gone through carefully by BLM management, and changes were made to it and, then, it was OK'd, as drafted and issued.

The CHAIRMAN. Was that improvement done before or after there was an article in the press about the report's existence?

Mr. CASON. I think, Mr. Chairman, it was probably after. I think you are probably correct that it was the forcing event in bringing the issue back up and in trying to address the public concern, we reinstituted the team to finish the document, got it all cleaned up, got it approved by BLM, and got it issued.

The CHAIRMAN. Would that have been done if there had not been an article in the paper?

Mr. CASON. Mr. Chairman, I do not know that I can answer the question. We were taking a look at the issue. We were looking at what the other agencies were doing, and I am not sure we would or would not have proceeded with completing the document.

The CHAIRMAN. This is a major area of your responsibility. Why would you not have?

Mr. CASON. Mr. Chairman, when we began the effort, we had a specific thing in mind that we wanted from this report, and the report was not designed to give us the answer on whether or not the spotted owl was in danger or what the prospects of endangerment were. The report was supposed to be designed to answer a basic question of what do we know and what don't we know, and in the areas of what we don't know, we wanted to target a specific study program to fill in those data gaps.

We were in a position, Mr. Chairman, that we were trying to figure out what to do about the spotted owl. We had made land management commitments already to protect habitat areas for the spotted owl. We were faced with a public issue where there was a lot of concern in the Pacific Northwest about what we are going to do next. We anticipated that we were going to have the kinds of

problems we have today with the Pacific Northwest, problems that Congress is wrestling with today in the appropriations process.

What we were trying to do is identify what we did know and did not know in this process so we could do a better job of making decisions. We did not get that kind of a product out of the task group, and it took on a lesser importance since we did not get there.

The CHAIRMAN. Well, I had asked staff to interview all those who had attended the meetings in which the basic purpose and the final outline for the report were developed. Looking at everything they found, here is the findings: that the team and the BLM management had at least two meetings with you in March 1986, 3 months before the draft was completed. The team developed an outline that corresponds almost exactly with the draft report you collected, and you were shown and made comments on this outline. Does that purport to your own recollection?

Mr. CASON. Mr. Chairman, when I met with you and your staff several months ago, I was shown an outline. It looked like the kind of things that we had talked about when we had the meetings back in March of 1986. What was missing out of the outline, I guess, and probably again I would say my own fault, is the underlying intent of what we were trying to do with the report.

If I had seen that outline at that time, I may have just glossed over it as another thing that we were trying to do in a very hectic day and may not have focused on the fact that it was not explicitly clear what our objective was because the questions were needed to be answered to get at our objective, but I guess I did not focus well enough on making sure it was explicit at the beginning.

The CHAIRMAN. Let me follow up on another question. I believe it was Senator Fowler who asked you this question, actually Senator Conrad asked similar questions. Senator Fowler said, "should we subsidize companies, private companies in the harvesting of timber on public lands?" And you answered, "I think we should be hesitant, and each time that we do that, make sure that we have clearly in mind the reasons we have for doing it in the case we do."

There has been discussion around here, when people harvest on public lands, do they make a killing that they would not be able to do, a financial killing they would not be able to do otherwise? So let's talk about oil shale and the patent claimants.

As I look back over the record, you signed an oil shale agreement in August of 1986. That was for 82,000 acres of land in Colorado, and that was signed for \$2.50 per acre. Subsequently, very soon thereafter, 17,000 acres were resold for \$2,000 per acre. \$2.50 per acre, up to \$2,000 per acre.

When we talked about this last June, you said you signed the agreement based on the advice of Interior's lawyers; is that correct?

Mr. CASON. They were part of the decisionmaking process, Mr. Chairman.

The CHAIRMAN. Did you sign it because they told you to sign it, or did you sign it because you thought it was a good idea?

Mr. CASON. Mr. Chairman, when we undertook to deal with the oil shale issue, we recognized up front that this was a very difficult one, and that it was not going to be politically or publicly popular. The law, the 1872 mining law gives us a set of mandates on how to

administer these oil shale claims. We recognize that the current contemporaneous public opinion about the law was not consistent with what the law had to say.

When we undertook to deal with this issue, we had been in court for almost 25 years on the underlying issues of the law that told us when we should patent and under what circumstances. The last round of that issue was when a District Court Judge Finesilver found in favor of the plaintiffs and suggested strongly to the Secretary of Interior that he discontinue the 25 years of litigation that occurred on this issue and that equity demanded that he do something on this issue other than continue litigation.

The Secretary of Interior agreed with the judge's findings, and he, along with Assistant Secretary Griles, set out to negotiate with the claimants on what kind of a patent they would get. The court found that these claimants met the criteria under law to receive a patent for the oil shale property. Congress, in passing the 1872 mining law, established nondiscretionary fee of \$2.50 that we were to charge for each acre patented. We did not have a choice on how much that was going to be, and as a part of the negotiation process, had we followed the District Court's decision, we would have granted a full fee title to the oil shale, the surface, and all the minerals associated with that claim to the claimants. But as a result of negotiations with them, under the contentious situation we had, we managed to negotiate back to the Federal Government all of the leasable materials, oil, gas, coal, et cetera, from them and certain rights to surface use that we otherwise would not have had.

Based upon the circumstances that we had and the best advice that we had at the time from the Solicitor's Office, the Solicitor himself saying that we could not successfully appeal this case, we thought it better and the Secretary decided to settle the case under the terms that we negotiated.

The CHAIRMAN. Well, was the decision based on law or a policy?

Mr. CASON. It is essentially a combination, Mr. Chairman, of legal and policy.

The CHAIRMAN. Are you saying you were not constrained by what you saw as being the legal pressure in making the decision?

Mr. CASON. Mr. Chairman, I think the consideration on the part of the Secretary was essentially an equity policy decision. He had full latitude to make a decision to proceed with another level of appeal. However, he was advised by the Solicitor that he stood very very little chance of prevailing on the merits.

The CHAIRMAN. I am sorry. You may have misunderstood my question.

Mr. CASON. I am sorry.

The CHAIRMAN. Now, let's assume that you did not have the law that you felt constrained you. Do you think it is good policy?

Mr. CASON. To patent oil shale property for \$2.50 an acre? If we did not have the 70 years of history on this issue and the law as it currently sits, no, sir I do not believe it is good public policy.

The CHAIRMAN. Well, then, if that is the case, at the time this was happening, Congress was in the middle of developing legislation to make changes in that, to correct what all of us thought was the \$2.50 leases, and, yet, you traveled to Colorado to talk to the oil

shale claimants, and you urged them to file patents on their claims. Now, nobody told you to go out and do that, did they?

Mr. CASON. No, sir.

The CHAIRMAN. And the Government, you just sold this acreage for \$2.50 per acre, then saw the patents going out at \$2,000 per acre.

Mr. CASON. Mr. Chairman, at the time when we were involved in the issue, the only legislative discussions that were taking place were clearly unacceptable to the administration, and the reason I took the initiative to meet with the claimants was in an attempt to draft compromise legislation that the administration would support. We did, in fact, do that and forwarded that legislation to Congress for its consideration.

The CHAIRMAN. Well, if that was your intent, you had some interesting side effects. The acreage filed for patent went up almost sevenfold. Suddenly they are out there filing for patents like mad and setting themselves up to potentially make a great deal of money out of it.

Mr. CASON. Mr. Chairman, I think—

The CHAIRMAN. I am not sure I recall your talking to me this summer saying that your reason for going out there was to develop some congressionally accepted alternatives.

Mr. CASON. If I did not mention it to you, Mr. Chairman, that was my oversight.

The CHAIRMAN. Did you think that maybe the better place to go first would be to somebody in the Congress who is working on that and is not going to go out and help claimants file these patents and make huge windfall profits? The people who might file the patents are not the ones who are going to write the legislation.

Mr. CASON. Mr. Chairman, we did that. As a matter of fact, before we had spent any time with the claimants at all, I had been in front of Congress, along with Director Burford of the BLM, answering a lot of questions about the signing of the initial patent agreement, and once we finished that process and had testified several times and discussed the oil shale issue in general and specifically with congressional staff, we tried to be positive and develop an initiative for a compromise agreement that we could all agree on. We were just trying to be helpful in the process.

The CHAIRMAN. Well, you were very helpful to the people who wanted the patents on the acreage.

Mr. CASON. Mr. Chairman, I think there has been some misunderstanding, perhaps, that has been communicated.

The CHAIRMAN. Well, clear it up.

Mr. CASON. I appreciate that. It has been said that I went out to urge the patent applicants to file claims or patent applications for this property. That is not accurate.

During the process of discussing with the oil shale patent applicants what their needs were and what they believed would be reasonable compromise legislation to end the issue, as part of that discussion they were told, or I agreed with, or somehow we communicated the point that one of the reasons being used during congressional deliberations on the patent process was they had not exhibited an interest in this property because they had not filed a patent application over the last 70 years, and these people were interested

to know what the rationale being used by Congress was for changing the law because they were impacted personally by the decisions.

These people were in a situation of being third and fourth generation families or businesses that had been maintaining these claims for over 70 years, and Congress was attempting to promulgate legislation that would severely impact their rights to the property, and during the discussions of trying to find compromise legislation, it was discussed that, here are the rationale being used by Congress for making the changes.

I did not urge them to go file the patents, but it is only sensible that if the reason being touted for them not having rights to their claims is that they had not filed a patent application, that they would feel the urge to do that.

The CHAIRMAN. On March 6 of this year, when you testified before the House of Representatives, Congressmen Rahall asked, "Did you meet with a number of these oil shale claim holders in Colorado last year and urge they file patent applications?" Your answer was, "Yes, I did."

Mr. CASON. Mr. Chairman, when we discussed that with—excuse me.

The CHAIRMAN. Excuse me.

Mr. CASON. Excuse me just a second.

The CHAIRMAN. Why don't we take a 10 minute recess?

Mr. CASON. Thank you.

[Recess.]

The CHAIRMAN. Before our short recess, I read testimony from March 6 of this year, where Congressman Rahall asked you, "Did you meet with a number of these oil shale claim holders in Colorado last year to urge that they file patent applications?" You said, "Yes, I did."

Now, urging them to file a patent application is somewhat different than asking them to help work out new legislation. Is this an either, or, or both?

Mr. CASON. Mr. Chairman, the difficulty that we had at that particular hearing in addressing Chairman Rahall's questions was the semantics that were being used at the time. When you go and talk to a group and say, the reason that the Congress is changing the legislation, the 1872 mining law, is because you have not filed a patent. The phraseology, as I understood at that time, in saying you urge them to file a patent was one that says once you inform them and they react, you have urged. It is a reactive, rather than proactive semantic issue.

I was not proactive with the groups to say I am urging you to go file a patent application on these claims because we want to adjudicate them. But it was—

The CHAIRMAN. A result of the meeting. It never happened.

Mr. CASON. I think, Mr. Chairman, that what happened as a result of being informed that this is the reason that the Congress is using to begin the process of changing that these people saw their own self-interest and in seeing their own self-interest said, well, gee, if that is the reason, I better let them know I am interested, and, as a result of that, those who are interested, I presume, have filed a patent application.

The CHAIRMAN. If you had to do it over again at that time when they were right in the middle of looking at this legislation, would you have gone out again?

Mr. CASON. Mr. Chairman, if I had it to do over again, with 20/20 hindsight, I would probably still take an effort to try and find compromise legislation that was fair to the private interest of the claimants and to the Federal Government, but I would try to be a lot more careful about how I did it.

The CHAIRMAN. Senator Baucus asked you some questions on whether you are going to be protective of the environment, and Senator Kasten had actually asked you similar questions. He asked you to outline the specific things you have done in your public career to support conservation protection of our natural resources and the environment. In response to Senator Kasten's written question, you stated that you had, "assisted the National Park Service in its review of BLM land located in park boundaries which can be transferred to the Park Service for park protection."

During your tenure, though, at BLM, the administration did not make one single recommendation for any of this land, no matter how deserved of park protection, that they would be transferred to the National Park Service. Did you personally recommend any BLM land for inclusion into the National Park System?

Mr. CASON. Yes, sir, I did.

The CHAIRMAN. Which one, ones, or how many?

Mr. CASON. I do not know off the top of my head, Mr. Chairman. The exercise that we went through was in response to a House measure, I do not remember the number. It was something like House measure 1413, or something like that, and what essentially that bill was designed to do was transfer, I believe, 31 areas of BLM land adjacent to national parks to National Park Service jurisdiction.

I believe what happened at that time is the Department of the Interior opposed the bill. But in its aftermath, we, in the Bureau of Land Management Assistant Secretary's Office and the National Park Service people, sat down and analyzed every one of the areas that were included in the bill to make a determination about whether it made managerial sense to transfer any of those areas from BLM jurisdiction to Park Service jurisdiction, and I believe we found about half of those areas were areas that it did make sense to transfer it.

I believe subsequent to our recommendations no action was taken to actually transfer those lands, and I do not remember why, Mr. Chairman. But we did end up in a position where about half of those areas were recommended to the Secretary's Office to be transferred to the Park Service, because it made sense.

The CHAIRMAN. I will just follow up for the record on that because, at least at the top of the administration we saw a decided lack of such action. Also, you said that you had taken action to acquire lands for the purpose of environmental protection through purchase, exchange, and condemnation.

I went back to the budget, and between 1985 and 1989, the Department of the Interior made only one budget request to purchase land for addition to our public land infrastructure, one. That was, incidentally, in 1987 when the Department requested \$10,000 to

purchase some acreage, I believe it was 8 acres, in Oregon on which they had inadvertently built a guard facility and they thought, being there anyway, they ought to probably buy the land, which is not a bad procedure to follow. But, certainly, nobody is going to think of that as some kind of major purchase. In fact, if we saw any efforts to purchase, usually it was State delegations from the area. So if you might provide for us the specifics to back up that answer to Senator Kasten regarding your role in acquiring land for the purpose of environmental protection?

Mr. CASON. Yes, sir, Mr. Chairman.

The CHAIRMAN. Did it ever get all the way up past you? I do not mean that facetiously, because the only thing that we can judge any of this has ever happened is we get a request, we get one 10 acre plot.

Mr. CASON. Mr. Chairman, I would be happy to supply an answer for the record.² Generally, I think that you are correct in assessing that there were few times that we actually took taxpayer money appropriated for the purchase of other lands. Generally, what we tried to do as a matter of policy, within the Department of Interior, is focus our land acquisition priorities on exchange as the process.

What we tried to do is find the lesser value lands that we had as options for exchange, and use those as trading stock to acquire higher value lands, and I think that there are lots of examples where we have used that exchange authority to acquire sensitive lands into Federal ownership, and that is the principal area that we did that.

I think that, Mr. Chairman——

The CHAIRMAN. Is that what you meant, though, in your answer to Senator Kasten?

Mr. CASON. Yes, sir, Mr. Chairman. I have been involved in a couple of condemnation actions where the sensitive values that we were trying to acquire could not be done through negotiation. I believe that should be a last resort to use condemnation, but we have used that, and we were——

The CHAIRMAN. Which of those—what was the case, do you remember offhand?

Mr. CASON. Off the top of my head, we had one area in the King Range area of California that I authorized a condemnation on, and one area, I believe, in Idaho where we had authorized a condemnation. The King Range one, I believe, was blocked in the Senate. I think the only other point, Mr. Chairman, the reason that we ended up having such a small budget, appropriated tax dollars for the purchase of land is we, in the Department of Interior, tried very hard to aid in reducing the deficit that we have. It is a tremendous problem, and we thought with the ownership of 700 million acres of the United States that we could try to put that as a lesser priority and use our other authorities, principally our exchange authority, to acquire what we needed.

The CHAIRMAN. OK.

Senator LUGAR. Mr. Chairman, I would defer to Senator Bond who has not yet had a chance to question.

² A written response was subsequently provided for the record. See pp. 138-171.

The CHAIRMAN. Senator Bond.

Senator BOND. Thank you, Mr. Chairman.

In the moments we have before the halfway point, I wanted to switch to some of the questions that will be facing our farmers in Missouri and the farmers across the Nation. We are concerned. In August, over 7,500 Missouri farmers still had conservation compliance plans to complete. If there are a rush of farmers seeking assistance at the last minute, are there any circumstances in which you would be inclined to give them additional time, or do you think they have had enough time to get the conservation compliance plans approved?

Mr. CASON. Senator Bond, I think the answer to that will be a case by case decision on why we do not have a conservation plan in place. To the extent that the fault for not having a conservation plan in place rests with the Federal Government because we did not have the resources or the wherewithal to get those plans done, I think it would be prudent to look for an option to extend the time to allow enough time for compliance.

To the extent that it is from the fault of the farmer for not having pursued diligently the development of a plan, I think we would have to be very circumspect about granting additional time.

Senator BOND. Do you know whether the Department has analyzed what likelihood there is, from the new mandates of conservation compliance, that a significant number of farmers would just opt out of programs? Is that a significant danger? Do you have any ideas on what we ought to do with it?

Mr. CASON. Senator Bond, I am not familiar with a specific look into the issues of how many farmers would opt out of the program. I think it is probably a mixed bag, and if an individual were making that decision, I think it would be because that individual believed that the constraints and burdens associated with the program exceeded its benefits. I imagine that might occur in some circumstances, but I do not know how widespread it is.

Senator BOND. I think that is something that would require attention, and I would certainly hope the Department would be looking at it.

A related question, of the conservation plans completed to date in Missouri, about 8 percent of the land would require extensive capital investment coming to some one-quarter of a billion dollars. Do you think the SCS should be supporting these improvements? Do you have any plans on how to assist farmers in providing those funds, or do you think there ought to be some other answer for that 8 percent of the land that would be so expensive to bring into compliance?

Mr. CASON. Senator Bond, these kind of programs are always very difficult to give a definitive answer without knowing all of the facts. Clearly, one of the things that we have to do in administering a soil conservation program is to assure that we have clearly in mind a national goal of what we want to achieve, and I think that has been pretty well defined so far.

I think to implement that plan requires a whole different line of thinking, and we have to have flexibility in doing that and always be diligent trying to find ways to assist farmers in complying with these national goals. Whether we are permitted, because of budget

constraints, to offer as much assistance as individual farmers would like, I do not know, but, certainly, Senator Bond, I would be guided by your guidance and that of the rest of the members of the committee as to how we can best do that so that in achieving the national goals we have set out we minimize the adverse impacts on individual farmers.

Senator BOND. Mr. Chairman, I have some other questions. Should we just go on?

The CHAIRMAN. My intent is to go to the floor and vote and come right back. I only have a few more questions. The rest I was just going to put in the record. If you want to do that too, we would recognize you immediately and take whatever amount of time you want.

Senator BOND. If that would be convenient for everyone, Mr. Chairman, I think we probably ought to hustle.

The CHAIRMAN. Why don't we go over and vote and, then, come back, and you will be recognized immediately, and you can have whatever time it takes. If you need extra time, I will yield you mine.

Senator BOND. Thank you, sir.

[Recess.]

The CHAIRMAN. If we could reconvene and, Senator Bond, you were asking some questions.

Senator BOND. Thank you very much, Mr. Chairman.

The CHAIRMAN. Incidentally, Mr. Cason, how are you feeling, Mr. Cason, Senior?

Mr. JAMES ALTON CASON. Good.

Senator BOND. Mr. Cason is an old veteran fisherman, and we were reminiscing over some of the beautiful trout and small mouth bass streams in Stone County, Missouri. And really they are a whole lot more interesting than the questions I am going to ask Mr. Cason.

But, despite everything, I am going to pursue a couple of—

The CHAIRMAN. Mr. Cason is probably happy to talk about fishing at this point.

Mr. CASON. Mr. Chairman, I would be happy to talk about fishing.

Senator BOND. It is kind of hard to get your head back into it, but let me address the nominee.

As we all know, tree planting is an important goal of CRP, and this is an area that you have a good bit of background.

Less than 1 percent of the CRP land in Missouri has been planted in trees, and less than half of the nationwide goal has been achieved.

What do you think the ASCS with the input from SCS could do to improve this? What kind of changes do you have in mind to encourage more tree planting on this CRP acreage? I think this is a real problem we need to deal with.

Mr. CASON. Senator Bond, I think this is an area that, if confirmed, I would need to discuss with you and Senator Lugar and Senator Leahy and the other members of the committee at length.

I think one of the principal issues that we have here is that planting trees with an expectation of long-term, some kind of economic return, is something that a lot of people are hesitant to do.

We have a CRP program that runs from 10 to 15 years, and a tree crop is a much longer period of time. And we are in a situation right now that there are too many disincentives for people to commit to planting trees on their property in the expectation that they have to hold them long term before they have any kind of return from them.

I think the thing that I would like to discuss with this committee and other Members and constituency is to try and find a way of adding new incentives to induce people to plant trees with an expectation that they get some kind of return out of it at some period, and reduce disincentives, principally tax and other, from holding this kind of a crop in long term.

And I think it will apply not only to the CRP acreage to ensure that highly erodible lands are taken care of in a longer term than the program, but also into our State and private forestry area where we have opportunities across the Nation to encourage more tree production in State and private lands to lessen the requirements from national forest land or BML land, the public lands.

Senator BOND. Any other disincentives that are governmental rather than market or cost oriented, which should be addressed other than taxes?

Mr. CASON. Senator Bond, I think the principal problem is the relative economics, having trees as an economic enterprise in that with tax policy and annual local taxes, capital gains taxes, and other things, it becomes very expensive to be into this area. And few people, fewer than we would like to have, see this as a viable long-term option for commuting their lands to the production of this kind of a crop or to this kind of a commitment.

To those where the economics do not matter, and they are after the aesthetics, it is not an issue. But for those that we want to encourage, we need to take care of them.

Senator BOND. Well, I would be happy to discuss it with you. We have a forest cropland property tax abatement law in Missouri. And I think that we may need to look at something like that on a larger scale.

About a month or so ago, I toured northern Missouri with our State conservationist. We looked at a large watershed project which is important to minimizing flood damage and reducing soil erosion.

Given 3 years of drought and some very serious water problems, I think we should review the objectives of watershed projects. Community leaders are now beginning to look to the SCS projects for water assistance. It seems like there might be an opportunity for some multiple benefits, benefits in addition to soil erosion prevention and the minimizing of the flood damage.

Have you any thoughts, experience, or views in this area? How might we be able to tie in more benefits on the watershed programs?

Mr. CASON. Senator Bond, I am aware that the Soil Conservation Service does have authority and appropriations for carrying out small watershed projects. And as I understand it, they have quite a long list of projects that have been authorized, some funded, some unfunded.

And I think one of the things that I would be willing to do in this process is consult with you and the other members of the committee to make sure that the allocations of the available funding that we have, or perhaps the size of the available funding should be looked at to see if there are other priorities that we should pursue. And if there are, I would be happy to cooperate as much as possible to try to identify those.

Senator BOND. I do not think it is a question of other priorities so much as recognizing the potential benefits of these water supplies. Perhaps we could utilize funds from other sources in conjunction with SCS funds where projects would have multiple benefits beyond just what the initial SCS projects entail.

Finally, an issue that we are very interested in deals with the flexibility of planting decisions for crop farmers. I believe that, to promote market-oriented farm planting decisions, as well as, and even more importantly to achieve the soil conservation goals, more flexibility is going to have to be built in to the 1990 farm plan.

But, as we look at new crops, some of which have very positive soil conservation properties, it has come to our attention that the SCS has not included some of the crops, specifically canola and crambe, in their field guides for compliance.

Are you familiar with this area? Do you have any thoughts about the guidelines that the SCS has?

Mr. CASON. Senator Bond, my thoughts on the issue is that we should strive to provide flexibility to farmers, and to the extent that there are other options that can be pursued to achieve our soil conservation goals and, at the same time, provide some flexibility to farmers to respond to market orientation, I think we ought to do that.

If confirmed and I am given the opportunity, I would appreciate it if your staff could let me know how I could help.

Senator BOND. Well, we would have some suggestions for you.

Mr. Chairman, I think those are the main questions that I needed to raise. I appreciate your giving me the extra time, and I thank the witness for his honest answers.

The CHAIRMAN. Thank you very much.

Senator Lugar.

Senator LUGAR. Thank you Mr. Chairman. Mr. Cason, as we discussed today, Federal law provides for protection of threatened and endangered species.

Can you discuss your basic philosophy concerning the protection of such species and what action do you perceive, in an affirmative way, the Forest Service might take in regard to the protection of endangered species?

Mr. CASON. Senator Lugar, I believe that the Congress has pointed out very clearly that it has a very strong mandate to ensure the continued protection of, identification of, and the Congress has instructed us to make sure that we take care of endangered species. I agree with that. I do not have any problem with that at all, and would act aggressively to ensure that we do everything we can to protect endangered species.

I think the Forest Service role in this process is essentially one of identifying where endangered species exist on public lands, Forest Service lands, and where they exist, act in cooperation with the

Fish and Wildlife Service under the Endangered Species Act, to identify the mitigation measures that are necessary to protect the species and ensure its long-term viability. And in any section 8 consultation that does occur, and agreement made with Fish and Wildlife aggressively implement those decisions, to do everything we can to ensure this long-term viability.

Senator LUGAR. As Senator Bond has pointed out, in the 1990 farm bill, we will probably debate once again the Conservation Reserve Program, a program which has been important to this committee, and we think important to the Nation's farmers.

What is your judgment about the success of the program to date, and what recommendations will you make to the committee with regard to conservation reserve as we begin to formulate a new program for the next few years?

Mr. CASON. Senator Lugar, at this time, it appears that the conservation measures of the 1985 farm bill had been very successful at controlling the erosion of highly erodible lands.

If I remember right, we are somewhere in the magnitude of 300 or 400 million tons of soil per year that we are saving as a result of the actions that we have taken. And that is very important for us.

The recommendations that I would make for the 1990 farm bill, I do not know at this point, Senator. I think that, as we go through the process of trying to formulate an opinion within the administration on the 1990 bill, that I would seek the advice of the members of the committee and yourself and the constituencies on what they think is important and what should be included in the bill in an effort to develop administration position.

Senator LUGAR. Do you have any thoughts with regard to the same legislation with regard to provisions dealing with pesticides and insecticides? Earlier today in the hearing, the thought was suggested that clearly research now indicates that limiting use of pesticides and insecticides may be an important goal for many farmers, both economically in terms of cutting down costs and in terms of the environment.

What is your general judgment as to where we ought to head with regard to the insecticide and pesticide issues?

Mr. CASON. Senator Lugar, I do not know whether we are in a position right now to advocate that legislation is required to address the issue.

I think what I would believe would be the most important thing to do right now is to make a very objective assessment of the state of the art of our technology for being able to demonstrate and transfer techniques to the farmers of this country that would allow them to reduce the input or the application of pesticides and insecticides.

If we have the technology available, and the technology is reasonably economic, I personally believe that farmers, once presented with a better more cost-effective alternative, would jump on the bandwagon to try and apply that technology.

Senator LUGAR. Would you be an advocate within USDA for both the advancement of this education process, as well as identification or the dissemination information that might be available to farmers?

Mr. CASON. Yes, sir, Senator Lugar, I would. I believe research and education to improve the way we treat both our economic prosperity and our environment is very important.

Senator LUGAR. Finally, Mr. Chairman, I would just ask the witness for thoughts with regard to our 1990 legislation, and ground water, which as you know was a part of our FIFRA discussion last year. The ground water considerations loomed very important. Last year they were temporarily laid aside so as not to derail the whole prospect of having FIFRA reform, but they recur because they are important to farmers all over the country, as well as to citizens who are worried about their ground water supplies.

What thoughts can you present on your sensitivity on the ground water issues, and what we should be doing in the Congress on this behalf?

Mr. CASON. I think the ground water issue is a critically important issue to our country. Ground water in and of itself is an absolute critical piece of the biological food chain, our ability to survive and have a healthy environment. I think we are in a position right now that we have hundreds of actions every day that impact our relative water quality, and I think that we have a responsibility, a responsibility—that I would like to have if confirmed, to try and assess where we are with the water quality that we have in this country, identify problems and take aggressive action to address those problems. To that extent, I would be supportive of activities within the Department for research to identify the problems, research to find better techniques to reduce the problem, take aggressive mitigation actions to the extent possible to remedy the problem, and try to find ways to educate everyone in the process as to what is causing impacts on water quality and how can we alleviate that and identify techniques that we can spread to others to help us remedy the problem.

Senator LUGAR. In short, to underline the point, you will be a strong advocate within the Department for ground water reform efforts and specifically will work closely with this committee so that we can jointly create programs that the administration will support and that, hopefully, in the course of this legislation, we can pass next year?

Mr. CASON. Yes, sir, Senator Lugar. I would be guided by this committee. And if I have the opportunity to be confirmed, it would be right at the top of my list of important initiatives to undertake.

Senator LUGAR. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cason, I am going to have a number of questions for the record. But there are some things that I am interested in.

In January, the latter part of January of this year, President Bush was inaugurated. In the 3 weeks leading up to that, there were a number of actions that you took—this was well after the election, between the time the Congress is out and is coming back in—that you took as a member of the Reagan administration.

You signed an audit agreement with 12 major oil companies on December 28, 1988. You promulgated proposed regulations affecting the mining of coal in protected areas on December 27, 1988. You notified Congress that the Department of the Interior intended

to end the self-imposed moratorium on processing of oil shale patents December 7, 1988. And then just 1 week before the inaugural, you signed the final rule on coal product valuation which, if carried through, would reduce the royalties collected.

This final rule reversed longstanding departmental policy that effectively lowered Federal royalty payments by \$40 million per year. Since this time, Secretary Lujan has announced he is going to give further consideration to these regulations and would seek public comments in light of the considerable controversy that has developed since you promulgated this regulation.

With regard to the December 7 regulation, we find now that Secretary Lujan will not process any patents in 1989, even though you had announced the removal of the self-imposed moratorium on the proceeding of those patents. The December 27 proposed regulation has now been formally withdrawn by Secretary Lujan. And with regard to the audit agreement, there are some major aspects of this policy that have been reversed because it appears that, if they had been implemented, the States and the Indian tribes could lose millions of dollars in uncollected royalty payments.

All of your actions during this short period have enormous implications. All of them have created a great deal of controversy. And all of them have either been put on hold or reversed in whole or in part. Why did you make these almost "on-the-way out" decisions in the last 2 or 3 weeks of the outgoing administration?

Mr. CASON. Mr. Chairman, with the transition after the election, Secretary Don Hodel made it a clear mandate on all of the people still left in the Department of Interior after the election that government was going to go on in spite of the fact that we had had an election and we were preparing for a transition.

Secretary Hodel did not believe that because we had an election that we should stop for several months doing all the things that we need to do at the Department of Interior. During this period of time between the election and January 20, when we had a new administration sworn in, Secretary Hodel continued in the leadership position that he had at the Department of Interior and continued to urge the persons that were left in the Department to do their business.

Each of these items that you have mentioned were the culmination of many months or years of effort that we wanted to bring to a conclusion before the administration changed and get a final decision made on them as much as we could. They were not last minute decisions. They were ones that had taken a long time to get to this point.

As you mentioned, Mr. Chairman, Secretary Lujan has reacted differently to each of the decisions that were made under Secretary Hodel. And that is his perfect right to do that. He can revisit any one of the decisions that have been made during the last administration.

The CHAIRMAN. Well, in this case of what you say about wanting to keep on working right up to the last minute, of course, that is commendable and we would expect that anyway. After all, everybody there is still being paid.

Mr. CASON. Thank you.

The CHAIRMAN. I was a District Attorney when I was elected to the U.S. Senate, and I was bringing criminal charges, and so on, up to within a matter of hours of the time I was sworn in as a U.S. Senator. But I did not take major cases and suddenly drop them without having some idea of how the incoming prosecutor might feel about those cases.

When crimes were committed in the middle of the night, or anything else like that that came at the last minute, I had to perform the particular functions of the prosecutor. But I was not about to suddenly reverse major policies without clearing it with the incoming District Attorney. And what appears here was not just doing the job, but possibly an overabundance of zeal, considering the fact that these are all very major actions and that the administration that came in just a few days later—an administration of the same party, I might say—took entirely different attitudes.

Can you see why this might raise a red flag in some of our minds?

Mr. CASON. Yes, sir, Mr. Chairman. I sure can. Each of the issues that you have talked about are very difficult ones.

The CHAIRMAN. I understand.

Mr. CASON. And each of these issues are ones that have a lot of parties involved in a long-term process trying to reach compromise or conclusions on how we should develop public policy.

The CHAIRMAN. We could go back and forth on that and whether the better thing would have been to leave your recommendations, all the material, for the people coming in or otherwise. But I suspect we would probably go around and around each side of this table doing that.

I will submit some questions for the record. We have another day of hearing on this anyway.

Do either of you gentlemen have anything?

[No response.]

The CHAIRMAN. Then we will stand in recess. We are going to have to go to a conference, incidentally, on the Interior appropriations bill, where we have major issues concerning the spotted owl and land acquisition. A coincidence, but that is what is happening. We stand in recess.

Mr. CASON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Cason.

[Whereupon, at 4:19 p.m., the committee recessed, to reconvene at 9:45 a.m., Wednesday, October 4, 1989, in room SR-332, Russell Senate Office Building.]

[Material submitted for inclusion in the record follows:]

APPENDIX

PREPARED STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM WYOMING

Today, you meet to review President Bush's nomination of Mr. James E. Cason for Assistant Secretary of Agriculture for Natural Resources and Environment. He is most qualified for this position. I am pleased to speak on Jim's behalf, and to lend my support to a swift confirmation of his nomination.

I came to know Jim while he worked as Deputy Assistant Secretary of the Interior for Land and Minerals Management at the Department of the Interior. He worked for Don Hodel—a fine man and steady who surrounded himself with people of equal quality and capability. Jim had the confidence of Secretary Hodel, and he repeatedly proved himself to be worthy of that confidence. Jim is a very knowledgeable, thoughtful, deliberate, and prudent man. We did not always see eye to eye on every issue that affected Wyoming and our Western States, but Jim would listen. And I found his countering arguments and opinions to be well thought-out. He can make a decision, and he can stick to it—but he will weigh all the factors of a matter and listen to all parties before he reaches a conclusion. I know that to be the case.

This has been an interesting confirmation process. Jim was first nominated by our President in March, and we now find ourselves, 6 months later, finally having the opportunity to discuss the many important issues with Jim during the forum of a formal Senate hearing. I want to thank the Chairman and the ranking Republican Member for this opportunity. During these 6 months, Jim has had an "open door" to any concerned parties. He has met with the environmental groups, he has met with resource development groups, he has met with wild life managers, and ecosystem experts. He has listened to people and has attempted to explain his philosophies, as well as to explain certain policies and decisions that he was a party to during the Reagan administration. Throughout this process, Jim has demonstrated strength, patience, tolerance, and perseverance. It has not always been a pleasant experience. Many things were said about Jim, personal criticisms and accusations, that were separate and apart from his policies and beliefs. In this confirmation process, Jim's character has been questioned. I can state to you today that Jim's character is exemplary and is above reproach. He has illustrated that to us all during these past months and I believe it should be acknowledged and noted.

My home State of Wyoming and all the other Western States face many critical issues relating to the use of our forests and wilderness lands. Many decisions regarding water, land use, grazing rights, recreation, timbering, preservation of unique and sensitive areas will be made by this administration. It is so very important that we all know that the individual charged with the management of the natural resources on our forest lands is a man of integrity and ability. It is important that we know that this individual is willing to work with all of us in Congress. I know Jim Cason to be this man.

I look forward to this Agriculture Committee completing its review of Jim Cason and to an expeditious and favorable vote on his nomination. I am ready to vote for Jim Cason on the floor of the United States Senate. And I am ready to begin to work with him on the critical issues that are so important to my home State.

NOMINATION OF JAMES E. CASON, TO BE ASSISTANT SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE

WEDNESDAY, OCTOBER 4, 1989

**U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.**

The committee met, pursuant to notice, at 9:45 a.m., in room SR-332, Russell Senate Office Building, Hon. Patrick J. Leahy (chairman of the committee) presiding.

Present or submitting a statement: Senators Leahy, Conrad, Daschle, and Lugar.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM VERMONT

The CHAIRMAN. The committee will come to order.

Good morning. Mr. Cason, my hope is that we will finish the hearings on your nomination today. I am sure it will not cause you a great deal of dismay if we finish today.

In going back over the notes from your answers to questions the other day, I had a number of matters that came to mind.

For example, Congress passed the Federal Oil and Gas Royalty Management Act (FOGRMA) in 1982. The act was passed in part because of hundreds of millions of royalty dollars that were going uncollected from oil and gas leases.

I believe the Congress clearly intended in that act that the Secretary of the Interior work closely and consult with the States and the Indian tribes in conducting the audits to ensure proper collection of royalties. The States and the tribes need to be part of this process because they receive a substantial portion of all the royalties collected.

By late 1986, the Minerals Management Service (MMS) of the Department of the Interior had in operation the computer systems necessary to conduct the financial accounting for such an audit program. Despite this fact, in 1988 the DOI's Inspector General found there were still major defects in this auditing process.

In response to the Inspector General's report what the IG came up with, MMS developed cooperatively with the States and tribes a new comprehensive audit strategy plan by the spring of 1988. The reaction from industry to this strategy was negative.

It is my understanding, Mr. Cason, that you and Assistant Secretary Steve Griles responded to industries' complaints by making major alterations to this strategy that would allegedly lead to the potential loss of many millions of dollars in royalty payments. Perhaps most significantly, these alterations were made, as best as I can understand, without the cooperation of the States and tribes.

So, there are questions concerning your behavior in these matters. I am not trying to give you any kind of surprise or trick questions here. I wanted to tell you what background I am working from.

My first question to you is: Why make any changes in the initial audit strategy if the Federal Government and the tribes and the States stood to lose money from such changes?

TESTIMONY OF JAMES E. CASON, NOMINATED TO BE ASSISTANT SECRETARY OF AGRICULTURE FOR NATURAL RESOURCES AND ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE

Mr. CASON. Mr. Chairman, this is a very complex part of the Department of the Interior's responsibility. Under FOGRMA, Congress had given us a mandate that they wished us to do a very good job of reviewing all oil, gas and coal companies, to ensure that they were paying all of the royalties on time, in the correct amounts.

When we received, in the Assistant Secretary's Office, a copy of the audit strategy document that had been worked out between MMS staff, the Indians and the State auditors, it was our firm belief that that document, that strategy, did not go far enough or do a good enough job of ensuring that we were doing a contemporaneous job of collecting all the money that we were due on time.

In that document, essentially the strategy for the 12 major residency companies—they are the largest companies, those 12 pay about 67 percent of all revenue—for those companies, the audit strategy envisioned doing audits on a 12-year cycle.

Essentially, what they were saying in that document is we are going to take 6 years of payment history and we are going to take 6 years to complete an audit on that 6 years of payment history. Hence, we would be in a situation that it would not be until approximately 1992 before a company would know that it paid the right amount in 1980.

It was our firm belief that that was not good enough and what we wanted to do was put more effort, more emphasis in the royalty management program to try and speed that up. At no time in this process, did we envision any change in the process that would eliminate the royalty payment responsibility for a single dollar to anyone.

We reworked the strategy with the staffs of MMS and they with the States and tribes. What we pointed out to them was; we wanted to speed this up, we wanted to do a comprehensive job, and we asked our staff to tell us when they could finish the royalty management job in a more contemporaneous manner, and we agreed with that date.

The CHAIRMAN. Well, as I understand the results of these actions, you cut off the audits on pre-1980 leases where the royalty dollars could not be collected, even though industry could still col-

lect royalty overpayment refunds for the pre-1980 period from the Government. Also, these changes shortened drastically the amount of time available to conduct audits on 1980-1983 leases, a period of high production and high royalty payments—and MMS apparently has disagreed with you on this latter change, because in the past month they have reversed that policy. Is that correct?

Mr. CASON. Mr. Chairman, I do not want to disagree with you, but that is not correct.

The CHAIRMAN. Well, feel free to make a statement, that is why I am asking you these questions.

Mr. CASON. Thank you.

The CHAIRMAN. Why is it not correct? Have they reversed your policy in the past month?

Mr. CASON. No, sir, they have not.

If I can deal first with the pieces in the question: First, we did not close off in the Assistant Secretary's Office, as a result of my decision, we did not close off the pre-1980 period. What we did was reach an agreement, a compromise, with the 12 major companies and with our MMS royalty auditing staff, as to how we were going to treat that period, and I think it would be important for everybody to understand why we did it.

Essentially, we are responsible for auditing thousands of leases across the country, with hundreds and hundreds of companies, and what we are trying to do is assign the scarce audit resources that we have, which are people and money and time, against the auditing job, and what you find is the auditing job, Mr. Chairman, is this large [indicating] and the resources we have to do the job are this size [indicating]. So, in essence, the job is bigger than the resources, if we were going to pursue and audit every lease, every transaction for every year kind of strategy.

What we did, instead, is we addressed our staff, the royalty management people, and said where in all this royalty management job do we have the highest potential for getting the greatest return of dedicating our audit resources. Our staff told us, in the Assistant Secretary's Office, that the pre-1980 period was the period that was most heavily audited, had been audited by MMS, had been audited by the Inspector General, had been audited by USGS before it got transferred to MMS, and that that period had the lowest promise of all the periods available to us for doing future audits.

Then we suggested to the MMS program that, when you finish the audit of a company, we want you to send a closure letter, and at this point what we want you to do is look through all of your records, the IG audits that are still pending, any other audits that are still pending, and put in the closure letter that we are closing your books on this pre-1980 period, with the exception of anything that they believe was not closed.

Now, we gave our staff total latitude to except anything that they believe was still an open issue when they issued those pre-1980 closure letters. So, we did not close off anything for the 1980's except that part of audits that our MMS staff believed was finished.

The CHAIRMAN. As I understood the settlement agreement, it says the MMS will promptly issue closure letters for all periods prior to September 30, 1980, and will release the companies from

any obligation to retain documents pertaining to transactions that occurred prior to that date, with certain exceptions, primarily regarding fraud.

Mr. CASON. Yes, sir, that is true. And the reason that we did that, Mr. Chairman, is in FOGRMA there is a statutory provision that says the companies are required to maintain their records under statute for 6 years. It is pretty easy to figure out that in 1989, that anything before 1980 is longer than 6 years, and we were having a lot of complaints from industry saying you are unilaterally mooting the statutory provision that allows us to manage our records.

Now, we have an administrative procedure wherein we can moot that statutory provision and require them to hold the records as long as we need them for audit, and that is exactly—

The CHAIRMAN. If there are audit investigations under way, it is required to hold it, is that correct?

Mr. CASON. That is correct.

The CHAIRMAN. Let me go down through it, to make sure I fully understand this.

Mr. CASON. Yes.

The CHAIRMAN. You say it is a complicated area.

Mr. CASON. It is.

The CHAIRMAN. We do collect, the U.S. Government collects hundreds of millions of dollars in oil and gas revenues each year, that is—

Mr. CASON. That is true.

The CHAIRMAN. Between 1980 and 1983, it averaged approximately \$900 million a year.

Mr. CASON. I do not know that that is right. I normally think in terms of billions, but it may be that.

The CHAIRMAN. One-half went to the States. Over that same period, the Indian tribes collected about \$150 million a year.

Mr. CASON. That sounds about right.

The CHAIRMAN. Then, in 1982, we passed—I hate these acronyms—FOGRMA—

Mr. CASON. FOGRMA.

The CHAIRMAN [continuing]. Because in 1981, GAO studies said hundreds of millions of dollars owed the Government each year may be going uncollected, and then in 1988 the Inspector General said there was an underpayment of \$152 million in leases that initially yielded \$59 million in royalties, or about \$2.50 in uncollected royalties for every \$1 collected.

Now, after FOGRMA was passed, the audit program was developed. As I said earlier, when we started this morning, by the spring of 1988 they developed some kind of a cooperative—MMS developed a comprehensive audit program, along with the States and the tribes.

Industry objected to the program developed in the spring of 1988, cooperatively developed, and in the next 4 months industry officials met with you and other Interior officials, and then you came up with recommendations on August 16, 1988, after all this time, that you gave to the Assistant Secretary Steve Griles.

Mr. CASON. Griles.

The CHAIRMAN. He adopted your recommendations on September 30, 1988, and a letter which said, "In response to concerns you and your client group directed the Minerals Management Service to explore alternatives to the audit cycle strategy established last spring."

Now, the question is this: In April there was an audit strategy that had been developed in cooperation with the States and the tribes, and in May industry objected to it. In the next few months, you worked out revisions of the strategy to deal with industry's concerns. Why were the States and the tribes not a part of that discussion? Do they not have a lot at stake here?

Mr. CASON. Mr. Chairman, they do have a lot at stake, and the States and tribes were involved in the process, beginning in April. The States and tribes had participated in the process of establishing the audit strategy that was forwarded to Congress in April, that strategy had not gone through the Assistant Secretary's Office, we had not looked it nor approved it, and when we finally did get it, we believed, in the Assistant Secretary's Office, that it did not do a good enough job, a contemporaneous job of collecting royalties.

After April, we began a process, me, and the staff in the MMS royalty management program, of discussing what our concerns were with that audit strategy, and the royalty management people discussed it with their STRAC committee, which is the State and tribal committee that assists them in the auditing program.

I had been told by my staff that there were several meetings at which these discussions took place with STRAC between April and August, so I am told that they were involved. They may not have been involved as much as they wanted to be, but I am told that they were involved in the discussions.

The CHAIRMAN. Let me make sure I understand you. This is a part that causes me some concern.

Mr. CASON. Yes.

The CHAIRMAN. The States and tribes, after all, had a lot at stake here. They were involved in the audit strategy, in the negotiations leading to the April strategy, and they assumed all had been worked out.

You then stepped in, substantial revisions were made to meet industry's objections. You say you assumed the States and tribes were somehow involved, but if you were the one working that out, do you not have an ongoing responsibility to make sure they are involved? Because if they left it in April, thinking the thing had been settled and now something that is going to tell the States how much money they are going to get, the tribes how much money they are going to get, you are going to work out a new settlement, should they not be actively involved in such negotiations? Did you not, as a public official, have a responsibility to make sure they were actively involved?

Mr. CASON. Mr. Chairman, as I understand the issue, they were actively involved in the process. I did not meet with the State and tribal auditors during the development of the April document, nor did I meet with them in the development of the issues or policy decisions thereafter.

It was the royalty management staff who met with them in the development of the April document and met with them afterward to discuss the concerns that we had in the Assistant Secretary's Office about the audit document, and it was our royalty management people meeting with the State and tribal people who discussed our concerns, got from the State and tribal people their concerns. And we had an expectation, Mr. Chairman, in our office, that our royalty management people was doing an active job of discussing the issues that we were bringing to their attention and that they were having an active dialog saying to the State and tribal people, here is what the concerns are of the Assistant Secretary's Office, and then returning to us, here are the concerns of the State and tribal people.

The CHAIRMAN. Well, who did you meet with?

Mr. CASON. We met with a variety of people on the royalty management program—

The CHAIRMAN. I mean outside the Government, who did you meet with?

Mr. CASON. We would meet—

The CHAIRMAN. Did you meet with the industry people?

Mr. CASON. They did ask for meetings and we accepted them in our office. As I have mentioned, we have an open door policy, anybody who wants to come in the door is welcome in the door, and those people wanted to come in and present their concerns and we heard them.

The CHAIRMAN. So, what you did is you met with the industry people and assumed somebody else was meeting with the States and tribes?

Mr. CASON. Yes, sir, that is true. Mr. Chairman—

The CHAIRMAN. In hindsight, on something this significant, would it not have been better to meet with all of them?

Mr. CASON. In hindsight, Mr. Chairman, I think because there was confusion about what our intentions were and what we were doing in the aftermath, yes, it would have been better to meet with the State and tribal people face to face, to make sure there was no confusion.

The CHAIRMAN. Well, apparently there is enough confusion that the new administration has now changed the alternative agreement that you developed. I mean, there has been a revision of your final agreement. Is that correct?

Mr. CASON. Mr. Chairman, as I understand the final agreement that has come out, there really has been no revision. It has been described, as I understand it, the new Director of the Minerals Management Service has adopted the same policy we had in December, and that policy was we do not intend to expend the scarce resources that we have to go back and continually reaudit the pre-1980 period, we are going to try and concentrate our resources in the post-1980 period, that if we find evidence of fraud or collusion, that will trigger a new audit and we will go back and look at any records that are there.

So, as I understand, Mr. Chairman, the policy is the same, it has been described differently, it has been articulated in a way that will answer the concerns people have expressed, but it is my understanding that it is the same policy.

The CHAIRMAN. Let me ask you this, because you are up for confirmation for the Assistant Secretary position, a very important position or we would not be taking all of this time on the confirmation hearings.

If you had before you the Forest Service's oil and gas regulations, would you negotiate only with the oil and gas industry and leave out the environmental interests?

Mr. CASON. Mr. Chairman, the answer is no.

The CHAIRMAN. This is a real question. This may well come up in the next couple of years.

Mr. CASON. I appreciate that, Mr. Chairman. If any environmental organization expressed an interest in coming into the office and discussing the oil and gas rules of the Forest Service, if it were permissible within the public comment period, I would be more than happy to take them, as a rulemaking process. If we are not in a rulemaking process and we are discussing the best way to handle a program and they express an interest to come in, they would be welcome.

The CHAIRMAN. Would they have the same access as the oil and gas industry would?

Mr. CASON. Yes, sir, Mr. Chairman, I believe in my capacity, if confirmed at the Department of Agriculture, they would have the same capacity to come in, if they expressed an interest, as anyone else.

The CHAIRMAN. If, again hypothetically speaking, you have the Forest Service's oil and gas regulations before you, the industry has asked to come in, would you feel it would be your duty to make any effort on your own part to get other views in there, or would you take the attitude that we have so much time open for such meetings, and if somebody else asked to come in, I will meet with them?

Mr. CASON. Mr. Chairman, I think it would depend on the circumstance that we were in. We have to rely upon staff internal to each agency, like I have had to deal with the Department of the Interior, like I would have to deal with the Forest Service.

If it appeared to be a situation where I did not believe that the staff were knowledgeable about the issue or were giving me an answer that they thought I wanted to hear or was not complete with giving me a description of where everyone was coming from, then I think I would have a responsibility to try to go out and find the other opinions.

Now, it is one of the things that we have not done as well as we could. Certainly, the concerns that surrounded this hearing has made me learn that I have to take more of a proactive role sometimes to seek those views. But, Mr. Chairman, I would like to pledge to you and to Senator Lugar and the other members of the committee that I would appreciate each of the groups, the environmental groups, any group that thinks they have something they want me to know, that I should know, as part of the decisionmaking process, I would hope they would take the initiative to let us know, because sometimes in the day-to-day grind of trying to deal with one crisis after another, sometimes you lose sight of taking the deep breath, stepping away from it to consider, who have I not talked to, who do I need to seek.

The CHAIRMAN: You understand why I ask these questions. At the hearing last week, we established that you met with the oil shale claimants while Congress was deliberating legislation to stop the patenting of these claims. Now, in one form or another, you urged them to file claims for patents and your testimony stands on what you said to them.

The result of the meeting was tens of thousands of acres filed for patent, public land would be transferred to private ownership for about \$2.50 an acre. On the oil shale matter, you were able to fly out to Colorado to urge claimants to file their claims for patents, but in the matter we have been discussing here this morning, there did not seem to be that kind of urgency of getting to the States and tribes. You said you assumed MMS was talking to them, but certainly there was no personal effort on your part to make sure they were in.

You wrote a memo, dated August 16, 1988, in which you laid out your own ideas on how the new audit strategy should look, and that is perfectly appropriate. You asked your Assistant Secretary to discuss these options fully with industry representatives. The Assistant Secretary adopted your options a few weeks later, on September 30. He notified the industry of these changes formally by letter. You formalized these changes on the audit policy on December 14, 1988, just before the start of the new Bush administration, in three memos. You then entered an agreement on the stationery of a law firm for the oil industry, closing off audits on pre-1980 leases, and setting what I think is an unrealistic target date for the 1980-83 leases. This is on the oil industry's law firm stationery.

Now, the new audit strategy, your agreement with the 12 major oil companies does cut off all audits on the pre-1980 leases, basically. Is that correct?

Mr. CASON. Mr. Chairman——

The CHAIRMAN. Is that the area where you disagree?

Mr. CASON. Well, that is one of the areas that I think needs to be clarified.

The CHAIRMAN. Go ahead.

Mr. CASON. The audit letters closed off portions of audits that had already been completed, and the audit letters were designed to notify the companies of any area where the audits had not been completed, to ensure that the companies retained the records necessary to complete the audits on those portions.

So, from our vantage point, in the Assistant Secretary's Office, we did not close off any opportunity to pursue any money at all. What we asked the MMS to do is to establish the ground work, to establish the point in time where everybody knew where we were with the auditing job.

Can I add one other thing, Mr. Chairman?

The CHAIRMAN. Sure. Go ahead. That is not the way I understand the letter, which is on Liskow & Lewis' stationery. It says, "MMS will promptly issue formal closure letters for all periods prior to September 30, 1980, and will release the companies from any obligation to retain documents pertaining to transactions that occurred prior to that date," except, as I said, in areas of fraud.

Mr. CASON. Yes. Mr. Chairman, that is true. Essentially what we were doing with the closure letter is, under FOGRMA, companies

have a requirement to maintain their records for 6 years, we were long beyond the point of 6 years, we were working with the companies to let them know which portion of their records were no longer needed to complete audits, and that is the purpose of the closure letter. It was to notify them that we are finished with these portions of your records, you can make your own choices how you want to retain them, and then for these portions of the records, we are notifying you that we have not finished these parts of the audit and we need to do that, you must retain the records for these.

The other thing that I wanted to point out, Mr. Chairman, that has not come out, is the actual decision to change the audit strategy into a more contemporaneous three-three cycle, as we called it. The three-three cycle was designed to meet the statutory intent of completing our audits within 6 years, as opposed to the 12-year cycle in the old audit strategy, and that decision was ultimately made by the Under Secretary of the Interior, Earl Gjelde. It was made neither by myself nor by my boss, Steve Griles. It was elevated up to Earl Gjelde and he made the decision that it would be a three-three cycle for the 12 residency companies and a five-one cycle for the next 220 companies.

The CHAIRMAN. The companies would be eligible for overpayment refunds from before 1980, under the agreement that is based on the Liskow & Lewis, the lawyers' letter?

Mr. CASON. Mr. Chairman, as I understand it, that was not an issue that we really discussed or reached a resolution on. It has been quite a while since I dealt with the issue, but I do not think we dealt with that issue on its face.

It is one of the items that I have discussed with the new Director of MMS, suggesting that he needs to come up with a more equitable way of closing off older periods, both in allowing for recoupments of overpayments and for pursuing underpayments for those periods, and that he should probably pursue either a statutory resolution to that issue or a regulatory resolution to the issue, so everybody knows what the playing field is.

The CHAIRMAN. Overpayment refunds were not precluded by that agreement, though?

Mr. CASON. I do not believe so, Mr. Chairman.

The CHAIRMAN. I find no indication there was, but the argument can be made that the Federal Government is precluded from collecting royalties from that period, prior to 1980.

Mr. CASON. Mr. Chairman, the argument—

The CHAIRMAN. That is the area where we disagree, is that correct?

Mr. CASON. No. Mr. Chairman, an argument could be made that that is what the agreement did, but we specifically in the negotiations with the oil companies reserved that issue for future litigation, because we know we could not agree on that. We within the Department of the Interior—

The CHAIRMAN. If there are no documents, what are you going to do?

Mr. CASON. Well, Mr. Chairman, it is one of the things that we could not agree on and we know that we are going to litigate it. It is an item, Mr. Chairman, that we do not believe we have any statutory authority at this point to not pursue a known underpayment.

If we know that the company owes us money, we feel like we have to pursue it.

What we tried to do with the audit closure letters is say that we are not going to go back and conduct audits at the drop of a hat, but if we know that you made an underpayment, we will bill you.

The CHAIRMAN. I have a number of questions, but I have trespassed on Senator Lugar's time here.

Senator LUGAR. Not at all, Mr. Chairman.

The CHAIRMAN. I yield to Senator Lugar.

Senator LUGAR. In pursuing a line of questioning that is very important for our overall hearing, I am curious for the record why the form of this agreement appears on the Liskow & Lewis letterhead. Would it not be more appropriate for a document involving the U.S. Government, and others, to appear in a form produced by you as a public official?

Mr. CASON. Senator Lugar, I suppose it does look that way. How we had gotten there is we had had several months of protracted discussion with the industry group that was concerned about our departmental policy on releasing auditing records. And at the end of that process, the groups involved had volunteered to put together the agreement, and they did put together the agreement in conjunction with and in consultation with the departmental Solicitor's Office, which handles all of our legal affairs.

Once we got the draft agreement from the companies, we did run it by our internal Solicitor's Office, and the question was asked: Does this have to be on Department of Interior stationery? And our Solicitor's Office indicated that it was of no consequence one way or the other on whose stationery the agreement was, as long as the phraseology of the agreement was acceptable to all parties.

As a result, we ended up signing it on the company's stationery instead of our own. But it was with full cooperation, knowledge, and agreement of our Solicitor's Office in the Department of the Interior.

Senator LUGAR. Well, I think part of the problem of many of us raising these questions is that while it may have been a different period in Government than the current administration, the allegations made by many persons interested in this nomination is that the whole Department, and yourself as a part of that Department, were overly solicitous of business and industry points of view. Although it may not have appeared important at the time to the Solicitor or to whoever your legal counsel was, obviously in retrospect it appears very important. Part of the public debate is over the balance of judgment in trying to handle public and private matters.

Clearly, an argument can be made—and you have, I suspect, made it as well as it can be—as to how the Department approached these issues as a matter of public policy, not only to the Federal Government, but the States, the tribes and what have you. That obviously remains in dispute, as Senator Leahy's questions indicate. But the appearance of this letterhead gives the perception of a tilt toward the private industry side of the issue.

Conceivably, you could argue—and I will frame the arguments for you—that you were caught up with a group of people all of whom were headed in this direction, and you in that situation were

part of the snowball. Nevertheless, you are now divorced from that group, whoever they were, on your own making these explanations.

I don't want to borrow from future testimony, but just for the sake of allowing you to make a record on this question, I have noted in the testimony we will hear from Mr. Jay Hair, the president of the National Wildlife Federation, that "Mr. Cason's record at Interior was consistently antagonistic toward environmental concerns and subservient to the demands of commodity development interests, in a manner all-too-similar to the attitudes of former Secretary Watt." Later in the testimony, Mr. Hair points out that the National Wildlife Federation, at least during his tenure of 9 years, has opposed only one other nominee, and he will lament and I suspect will recite the names of James Watt, Anne Burford and Robert Burford as people he did not oppose, or the Wildlife Federation did not oppose. However, he feels that in retrospect they might have.

I suspect that this group and others have decided they don't want to make the same mistake again, and are into this current situation with a great deal of anxiety. Because they believe that although your assertions are that the particulars that we've been discussing are only various incidents in a fairly long tenure, their assertion has been, I suspect will continue to be, that your actions are indicative of an attitude or an overall record. This perception would continue even if one resolved the spotted owl question or the royalty question or the various things we have explored, because these actions are indicative of a whole trend of activities, a whole state of mind about these situations.

Now, I make that case and borrow from coming testimony because you may not have an opportunity to respond to it in the same way that you can respond to my raising the question now. What is your response to this assertion about a lifetime record in public service, dotted by these points along the way, but all seemingly indicative of a similar trend of thought?

Mr. CASON. Senator Lugar, I couldn't have said the opening any more eloquently than you did. Clearly, the last administration had its agenda of things that it wanted to do and how it wanted to do it and how it wanted to be perceived. This administration is different. President Bush has clearly laid out a different agenda. Secretary Yeutter has laid out a different agenda. And I plan to operate within the constraints of their agenda and do everything that I can to make them successful in the way that they want to be perceived.

Within the last administration, I had a long record, Senator Lugar, of dealing with very, very difficult issues. None of these issues that we've been talking about so far in the hearing were easy. They weren't easy choices. Each of them involved many, many months of negotiation, not only with the parties involved but internally within the Department and with various outside parties, to try to determine what was the right thing to do. And that's what we tried to do.

In this case and a number of other cases, it may appear that we were trying to do some big favor for industry, but we weren't. What we were trying to do was figure out what's the right thing to do, what would be the right public policy in this circumstance, and

most, if not all, of these issues that we've talked about were elevated all the way to the Secretary's Office for a decision.

We tried the best that we could to make good decisions. In this particular case that we've been talking about, one of the things that was intrinsic in the decisionmaking process is we weren't allowing anyone to have an opportunity to get away with paying \$1 less than they were responsible for. We were trying to figure out how to create a process that allowed for the payment and collection of the right amount of money, on time, in the easier fashion.

Senator LUGAR. Thank you very much. I have no further questions at this point, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Lugar.

Senator Daschle.

Senator DASCHLE. Thank you, Mr. Chairman.

Your response to Senator Lugar's answer was enlightening. Let me follow up by asking you about another matter that's at least somewhat related to your philosophy, Mr. Cason.

I have a memo dated September 23, 1986, from you to Danny Smith, who was then the Acting Assistant Secretary for Fish and Wildlife. In this memo, you're discussing the National Park Service's position with regard to the existing rights in coal mining in national parks. You suggest in your memo that the National Park Service concerns are too strident.

My question is: What was it about the Park Service position that was too strident?

Mr. CASON. Could you inform me, Senator Daschle, on what the issue was on the memo you're talking about?

Senator DASCHLE. Well, the issue dealt specifically with the existing rights that miners and mining operations have on National Park Service land.

There were four recommendations: That park resources and values be protected; that mining operations treat the handling of VER determinations in all lands the same; that suspension notices achieve their stated objectives; and that peculiar legal questions surrounding the reliance on the definition of certain lands in West Virginia and Illinois be avoided. Those are the four specific issues. You're probably familiar with the memo now.

Mr. CASON. Yes.

Senator DASCHLE. What was it that was too strident about these concerns?

Mr. CASON. Senator Daschle, we were going through a period of time, at the time of this memo, when we were discussing how we were to address the issue of valid existing rights in conjunction with coal mining. We have a situation where when Congress creates set-aside areas, special protection areas, either in the form of wilderness areas, national parks, wild and scenic rivers, et cetera—when those things happen, Congress traditionally designates the area in a piece of legislation that says there will be no development contrary to the purpose of the set-aside. And enclosed within the legislation is a typical phrase that said no development subject to valid existing rights.

Congress hasn't taken the time to define what valid existing rights are, so the administration has been left with a rather nasty

problem of trying to figure out what they are so that we know in what exceptions this kind of development can occur.

Second, when Congress passed the Surface Mining Control and Reclamation Act and 522(e), Congress said the same basic thing. No mining in the parks subject to valid existing rights.

So what you have was a chain of enabling legislation that says we're going to create a park, you can't mine in the park subject to valid rights; the Surface Mining Control Act, which controls coal mining, that says no mining in the park subject to valid existing rights; and no definition of what that means.

What we tried to do in the rulemaking process that we went through was define what a valid existing right was so that all of us would know, and then define who is going to make the decision so a process would be available to determine that, and then we printed with it as part of this process a policy statement that said: If someone is able to demonstrate that they have VER, or valid existing rights, and they indicate any intention at all of trying to exercise those rights in a manner inconsistent with the park designation, then we will stop you. It is our policy to stop you. We're informing everyone right now that that's what we're going to do. And we will stop you either through purchasing your property or exchanging with you for your property; or if we have to, we'll condemn it to prevent you from exercising those rights.

What prompted the memo between us and the Park Service is the Park Service was reacting to our process in a fairly strident fashion, determining that they believed that the rulemaking process posed some kind of threat to the parks. And, in actuality, what we were attempting to do is remove the threat from the parks because, under statute, people did have rights under the valid existing right exemption to mine in the parks, and we didn't want that to happen. And what we were trying to do is put together a process to eliminate that threat, and what we were trying to do is ask Danny Smith to talk to the Park Service people so that they would understand our intent in the process.

Senator DASCHLE. You're obviously quite personally knowledgeable about the issue, but I am troubled because it simply says here, "The Service recommends the Office of Surface Mining use the 1980 court-modified 'good-faith effort' definition for evaluating all the requests." I don't know what's strident about that.

Then right above that the memo says: "A proposed interim approach outlined in the suspension notice for the handling of VER has the very real potential to be extremely disrupting to the Land Acquisition Program. The alternative permitting new coal mining in the park is unacceptable as a result." I don't find anything strident in that language.

Go back again to your definition of "strident." What in that language appears to you to be strident?

Mr. CASON. Senator Daschle, I don't believe the issue refers just to that particular memo from which you're reading. We're going through—

Senator DASCHLE. Your memo refers specifically to this memo.

Mr. CASON. We were having a considerable amount of discussion with various parties, the Park Service and with the Assistant Secretary's Office of Fish, Wildlife, and Parks, and our people were

discussing with them. The Office of Surface Mining folks were involved with them. There was a lot more emotion involved in the issue at the time than just what's in that memo.

Senator DASCHLE. So you say that your concern about the National Park Service being strident does not stem from this memo? That's your testimony today?

Mr. CASON. That memo probably is part of the process, Senator Daschle, but it is not the only thing that was occurring at the time that we were concerned with. What our problem was in this process is that the older definition of the good-faith all permits test was one that the Assistant Secretary did not believe was a reasonable test, and as the Deputy Director in OSM and ultimately the Assistant Secretary, he wanted to do something to try and come up with a more fair test to demonstrate what valid existing rights were. We were having difficulty with that because of the monetary tradeoffs.

Part of the object of stridency in the issue was a concern that a good-faith all permits test would put owners of coal in national parks in the position that it would have been virtually impossible for them to have qualified, because it basically created an expectation that those people had to have anticipated in the future what kind of a test would finally be arrived at and would have had to have complied with that future expectation before it was ever defined. And my boss did not believe that that was a reasonable way to go.

Now, the reason that that's important to some of the Park Service folks is because it's a matter of money. There's only a certain amount of money that's been made available because of the congressional appropriations process and our budget deficit problem—

Senator DASCHLE. Let me just stop you there. You're saying that it wasn't environmental concerns; it was financial concerns that led them to propose the good-faith effort definition for evaluating the request.

Mr. CASON. No, sir. Senator Daschle, I think it's actually both. I think on the one hand the good-faith all permits test would have created a situation where virtually no one could qualify, and in not being able to qualify to mine, it removes the threat that mining could even possibly take place.

Senator DASCHLE. That didn't come up at all in this memo, Mr. Cason. It just says, "The proposed approach outlined in the suspension notice has very real potential to be very disruptive"—and I'm quoting now—"to the land. The alternative permitting new coal mining in the park is, therefore, unacceptable." It doesn't say anything about finances. Again, I am troubled by your description of this memo as being strident.

Then you say, "Well, I was concerned with more than what's in the memo. I'm referring to the general nature of the position of the National Park Service." But let me just read your memo to Danny Smith for the record:

"As I mentioned to you briefly, the NPS concerns on valid existing rights are perhaps too strident. I would prefer not to have our paper trail include this memo." I want to talk about the paper trail for a moment. You also say, "I have suggested that Dennis Galvin, NPS, and Jim Workman of OSM get together and chat about their

concerns on valid existing rights, and suggest to us a suitable approach for this issue. I'm returning this strident memo and asking for your assistance in expeditious compromise that is workable for all concerned."

What was it about this matter that would cause you to not want any paper trail?

Mr. CASON. Senator Daschle, at the time, there must have been some concern that would have caused me to write the particular sentence in there about not wanting a paper trail. At this time, I couldn't tell you what my thinking was then. Obviously,—

Senator DASCHLE. Mr. Cason, give me your best shot.

Mr. CASON. OK. My best shot, Senator, is within the context of the jobs that we had to do at Interior, what we were trying to do was to visit with the people involved to make sure that all of their concerns were known and addressed and do so without trying to be overhanded or overburdening in the process.

Senator DASCHLE. Why, if your position was so defensible, wouldn't you want a paper trail? Why wouldn't you want in the file some very good arguments as to why this memo was too strident?

Mr. CASON. Well, I think we did that through official channels, Senator Daschle.

Senator DASCHLE. But aren't official channels part of the file?

Mr. CASON. Yes, sir, they are.

Senator DASCHLE. Well, then, what is wrong with a paper trail in the file? What do you put in a file if you don't have a paper trail?

Mr. CASON. We do have files, Senator Daschle, and—

Senator DASCHLE. You specifically asked not to have a paper trail.

Mr. CASON. Yes, sir, Senator Daschle. In this particular case, we were trying not to have this particular memo as the official response to the Park Service until we had an opportunity to make sure that we knew fully what the Park Service—

Senator DASCHLE. That's not what we're talking about. We're talking about the file, Mr. Cason. We're talking about all the deliberations that went into a decision as to whether or not to have a paper trail. You said, first of all, that the National Park Service position was too strident in general, but then your memo says specifically it was the NPS memo itself that was too strident. And then you say in your own memo that not only is the NPS memo too strident, but that you don't want a paper trail saying that it's too strident.

Now, that sounds to me like a coverup. I'm giving you an opportunity to say that it wasn't and, for the benefit of the paper trail in this committee, explain this situation so that we can clarify the matter.

Mr. CASON. I appreciate that, Senator Daschle.

If the memo had arrived at the Assistant Secretary for Land Minerals Management signed as the official transmittal of the Park Service, and then we took the memo back to the Park Service and said we want this overturned, we want to say something else, let us address your concerns, I think there's a more amicable way that we can do this, it ends up adding one more piece to the official file that is confusing.

We try not to do that—

Senator DASCHLE. Who sees the official file besides those people within the bureaucracy?

Mr. CASON. Senator Daschle, lots of people read the official file.

Senator DASCHLE. Certainly no one who would read the official file would interpret whatever is in that official file as the final official position unless you say it is; correct?

Mr. CASON. I don't believe that's correct, Senator Daschle. I think with the attempts that have been made on trying to interpret my record, lots of things have occurred where people have read parts of my record and made an interpretation of it without the full record.

What we have tried to do in this case, Senator Daschle, is—and it's a fairly common practice that between Assistant Secretaries Offices that if you're receiving a commentary from one Assistant Secretary's Office to another that you think may not be fully informed, it is fairly common practice to make sure that the information is all there, all in the record, and that there's a common understanding before an official transmittal takes place. I think that's what we were trying to do at the time. That's the best I could tell you.

Senator DASCHLE. Well, I hope that's the case. You were talking earlier about how your decisions in the last administration reflected the attitude of policymakers within the administration. Based on other incidents, paper trails was not one of the last administration's long suits.

I wonder what your attitude about paper trails would be in this current position. In retrospect, do you have any misgivings about the decision you made in this case?

Mr. CASON. Senator Daschle, one of the things that I've learned well in this process is that I will have to be much more careful about what I say and how I say it and to whom I say it, and I will have to be much more careful to leave a very clear paper trail of what we're intending to do to reduce the possibilities of misinterpretation.

Senator DASCHLE. There is a paper trail—Mr. Chairman, I hope I'm not taking too much time.

The CHAIRMAN. Take all the time you want.

Senator DASCHLE. There is a paper trail, if you will, with regard to the computerized surface mining permit-block system, an unrelated issue but obviously something that you had a lot to do with as you developed a management plan to computerize permit block decisions. That was your project, was it not?

Mr. CASON. I had one phase of that, Senator Daschle.

Senator DASCHLE. One phase of it? Which phase did you have?

Mr. CASON. Senator, at the time, I was working for the Bureau of Land Management as a Special Assistant to the Director. I just completed a project for the Minerals Management Service that took me away from BLM for about 4 months, and I was requested by the Assistant Secretary's Office to take a detail to the Office of Surface Mining to put together specifications for a computer system to develop what is now known as the Office of Surface Mining Applicant Violator System. And it was my job early on in

that process to develop specifications that were later turned over to a contractor by OSM to develop the system.

Senator DASCHLE. And this Applicant Violator System (AVS) has been in effect now for how long?

Mr. CASON. If I remember correctly, Senator Daschle, it was turned on in October of 1987.

Senator DASCHLE. Are you then familiar with the GAO report issued in January of 1989 on the AVS?

Mr. CASON. Yes, sir, I am.

Senator DASCHLE. According to information that I have, the GAO identified fundamental problems in the AVS. The information is "insufficient for purposes of recommending the issuance or denial of permits to mine coal. The poor quality of the system recommendations is directly the result of inaccurate and incomplete data used by OSM to establish the system's data base." Basically, they excoriated the whole system. How would you respond to that?

Mr. CASON. Senator Daschle, after we had the GAO report and in the not too distant past, since I assumed this might be a question coming up during the hearings, I asked the Office of Surface Mining staff to give me an appraisal of how many times they've used the system to review mining permit applications and how many times they are aware that the system has permitted the issuance of a mining permit where they should not have done it. I think that's at least one indication of how well the system does or does not work.

The answer that I got back from the staff was that they had run approximately 6,800 permit applications since this system has been turned on, and that to the best of their knowledge there has only been one circumstance where the State has issued a permit which they later found out should not have been issued. And in that one circumstance, the person who would have caused the permit to be blocked was not listed on the application as he should have been.

So what I've gotten back from the staff is a recommendation that while the system is not perfect, and we recognize it is not, we recognized right up front that we had a horrible data problem. Even before we started the specs, we knew that we had a very difficult data problem, and we knew it was going to be a long time before it was fixed. And we spent a considerable amount of effort trying to fix it. But the results that we have right now indicate that at least the combination of automated and manual checks is placing us in a position that we're doing a pretty good job of assuring that people who should not get permits are not getting them.

Senator DASCHLE. I think I understand what you're saying. You went to the staff and asked, "What about this GAO report?" If I were on that staff, I know what I'd try to do. I'd try to put the best face on this thing as I could, I don't blame them for trying to do the same thing. But here you have a situation where, on one hand, you have the staff giving you their analysis of the AVS system, and on the other hand you have an agency whose job it was to objectively review the system, and the agency presents us with a very negative analysis of the system.

If you were a Member of Congress looking at a GAO report and looking at a staff report acknowledging their own self-interest, who would you believe?

Mr. CASON. Senator, if I were in your position and looking at the issue as you would have to, I think I would begin with the process of looking at the GAO report as the most unbiased, as I have done. In the process, we totally agreed with the GAO finding that we have a data problem, saying that we knew before we began to build the system that we were going to have a long-term data problem. But we—

Senator DASCHLE. You were in charge of this program for 4 years, were you not?

Mr. CASON. Yes.

Senator DASCHLE. I can see if it were 4 months or 4 weeks that you might not be held responsible for the problems of this program. But we're talking 4 years. And the GAO after 4 years of your supervision of this program says this system just doesn't work, it's crazy.

What does that say about your management in that period of time?

Mr. CASON. Senator Daschle, knowing the AVS system like I do, having lived with it for those 4 years, I think what doesn't come out from the GAO report is the level of effort that we've undertaken already to try and address the system. Some of the data problems aren't solvable in the short term. Some of the problem that we've inherited is from 1979 when the Office of Surface Mining began as an agency, it began with a very vigorous process of issuing citations to miners all over the country to stop doing things.

What happened, Senator, when our new inspectors with the Office of Surface Mining were issuing all the citations, no one had in mind at that time what kind of information we would need available in order to do the permit blocking in a system that came 10 years later.

Senator DASCHLE. When was that time?

Mr. CASON. It was 1979 when they started that.

Senator DASCHLE. 1979.

Mr. CASON. 1979.

Senator DASCHLE. It's 1989.

Mr. CASON. Now it's 1989.

Senator DASCHLE. And you have a report dated January of 1989.

Mr. CASON. That's right.

Senator DASCHLE. Ten years later.

Mr. CASON. That's right.

Senator DASCHLE. And the system doesn't work.

Mr. CASON. Senator, what I am saying is that in 1979 people did not have an expectation that we were going to have a computer system 10 years later that would require certain kinds of information in order to function properly.

Senator DASCHLE. But they had it 4 years ago.

Mr. CASON. No, sir. The information wasn't available 4—

Senator DASCHLE. Not the information but the concept. They knew they had a computer system they were going to have 4 years ago.

Mr. CASON. That's correct, sir.

Senator DASCHLE. They tried to devise a system in the computer that would adapt to the needs that they saw 4 years ago. What the GAO is saying—and you acknowledge the GAO has come to this

conclusion—is that after 4 years, whatever system it was that you devised just hasn't worked.

Now, you say that it ought to be repaired and that it's an evolving process. I'm wondering how much longer and how many more GAO reports are going to be needed before we acknowledge the fact that this system hasn't worked properly and major renovation is necessary.

Mr. CASON. Senator Daschle, if I could break the system down for you a second, the system software, the computer system software does work. It does what it's supposed to do. The computer system hardware does work. It does what it's supposed to do.

Senator DASCHLE. No one is arguing that. I'm sure that GAO would agree with that.

Mr. CASON. I think that's true.

Senator DASCHLE. That isn't your doing, though, is it? I mean, the hardware is just another matter. You can plug in an Apple II or a PC or anything you want to. It's making the hardware work to meet the goals, the objectives of a given plan. That's what we're talking about.

Mr. CASON. That's correct. So the system itself does work. The problem that we have that we agreed with GAO on and agreed a long time ago on is we have poor source data. And we've taken a lot of effort, Senator, over the last 4 years to try and correct that poor source data. We've developed two rules with the help of OMB to define what exact information goes into the system and how it goes into the system. We've had to clear with OMB a rule that allowed us to go collect that information under information collection budget process. We've sent out letters to all of the people in the system saying: Here's the information we have in the system for your permit; please make sure that the information is correct, help us correct it if it's not.

We've sent out letters to all the people who file OSM reports which basically define how much coal they've mined so they can pay their surface mining fee, and asked them: Will you correct the information that's here? We've had very good responses on those. We've sent out information to environmental groups asking them: If you have any information at all about anyone who you believe is violating the act, let us know what it is so we can update our files to make sure we have as good a data base as possible.

We've made lots of efforts, Senator Daschle, to try and improve the data. But we still have a problem, and we're going to have a problem for a while. What we've been trying to do is to gradually update the quality of the system. We've implemented a manual process to make sure that no one gets a permit who shouldn't. And we've implemented a manual process to make sure anyone who should get a permit is not denied one.

Now, the system isn't perfect and we know that, but we think the result of the combined manual and automated effort is one that has a pretty good record. And the one that the staff says—and I don't know that GAO disagrees with this—has created a record during these last few years that the permits that are actually issued are valid permits and should have been issued, with that one exception that we have corrected.

Senator DASCHLE. I want to make sure you understand, just for the record, that the GAO found no fault with the hardware or the system per se. What they found fault with is what went into the system and what came back out; that the recommendations themselves were faulty, and they were based on inaccurate data put into the system, inaccurate data mis-analyzed, and ultimately inaccurate recommendations as a result of the inaccurate inputs. And that's what they're finding fault with.

What they said was that over 4 years it didn't get better. Maybe it is getting better now. Hopefully, after a GAO report, an objective analysis, it will get better. We all have to hope that. But it does say something, I think, about management. It says something about our inability in this case to address a problem, sophisticated as it may be, with all the computer technology we have, effectively.

I don't know what that says in relation to other management concerns that there may be on the committee with regard to your record thus far, but it certainly in this one incident illustrates that, for whatever reason, management was perhaps not in peak form. You combine that with doctoring paper trails and talking about stridency with regard to a good-faith effort, and there is, I think, a serious question we have to address as to your qualifications for this position. I hope we can resolve them before the vote.

Mr. CASON. Thank you, Senator. Senator, if I might just add, had we had a choice on developing the Applicant Violator System at the time, we would have chosen as a management issue to have delayed the system implementation until we were able to implement a lot of data correction measures. That way we could have avoided the GIGO principle, garbage in and garbage out. But we weren't afforded the choice because we were under court order to develop the system on a particular time line, and that didn't afford us the time to try to solve the GIGO problem up front. So we've had to solve the GIGO problem afterward.

Senator DASCHLE. I tell you what—and I don't want to argue with you on this—it just seems to me if we can go to the Moon in 10 years, we ought to be able to solve a GIGO problem in 4. You know, I don't know why it would take 4 years. I could probably be much more sympathetic if I were there, and I apologize for, you know, what may be naivete. But I just don't think that is a legitimate defense. In 4 years time—10 years if you considered going all the way back to 1979—we ought to do better.

Mr. CASON. I appreciate that.

Senator DASCHLE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cason, I am still troubled, perhaps even more so having heard your answers to some of the questions asked by Senator Lugar and Senator Daschle.

As I understand the facts, your memo of December 14, 1988, established that closed audits can be reopened in the case of fraud, collusion, or underpayment. You then signed an agreement 2 weeks later with the 12 major oil companies on December 28, 1988, on their stationery which said that closed audits can be reopened only in the case of fraud. You dropped collusion or underpayment.

Then in conformance with your general policy, Interior officials sent the 12 major oil companies audit closure letters last January. They stated that audits can be reopened in the case of fraud and

then put back in collusion or underpayment. Industry promptly complained to you about this change, both in person on March 9 of this year and in writing on March 15. Two weeks later, you went back and told the Minerals Management Service to reissue closure letters for those accounts, so that they could be reopened for audit only in the case of fraud. You told them to go back to the policy as established in the agreement on the oil companys' lawyer's stationery.

Now, in answer to one of the Senator's questions, you said that things are different with this administration than they were in the past administration. There's a different philosophy on these issues. But I'm talking about things that while they began during the last administration, most of your steps were taken during this administration, this year. You said that you wanted every dollar collected. It is, after all, public money and you wanted it collected, but yet you cut off underpayments as one of the reasons of why audits can be reopened. You cut off collusion or underpayment, which, again, was the procedure agreed to in the oil company's letter. The Department of the Interior sought to put collusion and underpayment back in. You wanted to take it back out again.

It appears to me as a layman that it's harder for the Federal Government to reopen the audits of these 12 major oil companies if you take out collusion or underpayment. Why did you agree with that?

Mr. CASON. Senator, the reason that we agreed with the position and the reason that we agreed to it in settlement is: We were trying to maximize the benefit, the return that we get from investing our audit resources. We have a choice about where we're going to spend those resources, and the choice that we have is we can spend them during the 1980 to 1989 period where it's received only limited auditing where we had high value prices, where you had a very volatile market. It hasn't received nearly the attention that the pre-1980 period had received. And we could focus on the pre-1980 period, which has been extensively audited, has had reviews by three different entities—the IG, the USGS when they had the royalty management program, and the Minerals Management Service. And the advice that we received at the Assistant Secretary's level was the money, the money that we could hope to gain out of an auditing program in the post-1980 period.

So the agreement that we made in the pre-1980 period was an agreement that said we're not going to reopen audits. We're not going to put a team together and send them back in to these companies for the pre-1980 period because their time is too valuable. What we also said at the time with the companies is in cases of underreporting for this pre-1980 period, rather than send anybody back into audit you for this period, if we got information at all that points to the fact you've underpaid something, we're going to bill you for it. We can't sacrifice that. We're just going to try to concentrate our resources where we think the money is.

So we had an agreement with them. That agreement is still in place today, that for the pre-1980 period we don't want to go back in and do another comprehensive audit unless there's fraud and we discover that. And the reason that collusion isn't there is because our Solicitor's Office believed that the term "fraud" included collu-

sion. And the underreporting part of the issue was from zero to anywhere that if we had evidence of underreporting, we would bill it. But we wanted to concentrate our audit resources in the post-1980 period.

The CHAIRMAN. Is that why you felt you had to respond so promptly when those 12 firms got a hold of you and asked to have the Minerals Management Service go back and conform to your December 28 agreement with them?

Mr. CASON. Senator, I don't think there was any great motivation to respond promptly or not promptly. We discussed it with the staff of the Minerals Management Service to——

The CHAIRMAN. They complained to you on March 9 in person, in writing on March 15, and 2 weeks later you told Minerals Management Service to reissue closure letters and say audits can be reopened only in the case of fraud. That's it. I mean, somebody could walk in and say, "hey, we've got a whole lot of underpayment here, but we got rid of all the documents because you allowed us to do that, so tough." Nobody knows what it is.

I think 2 weeks is moving kind of rapidly in an issue of this significance, certainly in the way the Federal Government normally moves.

Mr. CASON. Certainly, Senator, I——

The CHAIRMAN. You can't mail a letter from here to downtown in much less time.

Mr. CASON. Certainly, Senator, I would agree with you that the Federal Government usually doesn't move very fast.

The CHAIRMAN. That's the only thing you'll agree with me on? Is that it?

Mr. CASON. No, we've agreed on other things.

The CHAIRMAN. Well, but, you know, Secretary Lujan apparently doesn't agree with this. The Director of the Minerals Management Service said last month that the changes you ordered in these closure letters wouldn't be made. Or is that an area we disagree?

Mr. CASON. Mr. Chairman, I believe that the Director of MMS is currently planning to issue closure letters, and closure letters very similar to the ones that we were discussing back in March. I don't think he has done it yet, but I am not positive.

The CHAIRMAN. Well, Mr. Cason, we can go around and around and around, and you understand my concerns on this.

Mr. CASON. I do.

The CHAIRMAN. I hope we have given you a chance to say whatever you want. Let me, just as one Senator, tell you how I feel about this. I will say this with you here to give you a chance to respond any way you want. I do not intend to say anything about this that I would not say directly to you.

You come from a background that I find very, very impressive. You spent part of your youth as a migrant worker. Certainly you know a lot of issues involving this country based not on an ivory tower position but from direct, personal experience. And I would think also coming from that background that you would feel very much a duty to be an advocate for people outside of the Government who might not have any kind of powerful voices to speak for them. And I find your background most impressive in coming to where you are today.

But what concerns me is that you've always been appointed to positions of public trust, and your assignment has always been to protect the public interest. If it wasn't Interior, it would be in the Department of Agriculture. And time and again you have been given this choice. Do you protect the public interest or do you protect the special interest? And with the endangered species decision, I believe you chose the timber interest over the public interest. With the oil shale claimants, I believe you chose the oil interest over the public interest. With the oil and gas audit plan revisions, decisions made behind closed doors, too often key parties were excluded. Again, the public interest fell to the private interest. It's like a judge in a litigation saying "I'll let one party into the courtroom." The other party would be kept out. You don't get a good and fair hearing that way. Both parties have a right to be heard. The public interests have just as much of a right to be heard as special interests.

Hundreds of millions of dollars in royalties were at stake. Now, you can choose to protect one interest or another. Do you protect the public interest, the taxpayers, or do you protect the commercial interest, the oil companies? In this case, I think you protected the oil companies. I think all interests should be protected, not one side over the other, but certainly the public interest when you're talking about the Government. If there is going to be preeminence, then the public interest has to come first.

In fact, you stopped the Government from collecting royalties in the letter you sent out, even if underpayment or collusion was shown.

Now, I see in this a pattern of protecting private interest over public interest. You, I'm sure, would dispute that. But the concern I have, and I have expressed this concern in the four different administrations that I've seen here during the time I've been in the Senate—I have expressed the same concern in every major confirmation hearing, that if people are going to hold public office, high public office, high public offices of trust like yours, then the public interest always has to come first ahead of any special interest. And the pattern that I see, speaking as one Senator, is that the private interest came ahead of the public interest.

Now, you have had some very strong defenders who have come before this committee, some as members of the committee, others who have testified on your behalf from the Senate, people we all respect highly. And, of course, the Secretary has spoken very strongly, privately and publicly, on your behalf. Every Senator will have to make up their own mind how they will vote around this table.

As I have said, I am not going to play parliamentary games on this nomination. We will hear all the rest of the witnesses, and then the committee will sit down, debate it, and vote, one way or the other.

In summary, I find in your record a pattern of protecting private interest over public interest. In the job that you're being nominated for, the public interest has to be preeminent. If you are confirmed, I hope you listen carefully to everything that's been said here, because there would be an enormous amount of public trust put in your hands if you were to be confirmed. That public trust

has to be the preeminent goal, the preeminent intention of you or anybody that holds the position you've been nominated for. It doesn't work otherwise, because the people who have to rely on that Assistant Secretary to protect their interest are not the people who have strong voices in Washington, not the people who have powerful interests that they can bring to bear. They're individual people. In some instances, they're people who come from the same kind of background you did and did not have anybody to speak for them. That's what has to be remembered.

Mr. CASON. Thank you, Mr. Chairman. I really do appreciate your advice.

I think that on the point of your conclusion that I would protect the private special interest over the public interest, I think you do recognize correctly that that's not my perception of how we would do things.

The CHAIRMAN. I understand.

Mr. CASON. I think that we have a really difficult job. Within the Department of Interior or within the Department of Agriculture, we have a plethora of statutes that require us to do some very, very difficult things. And we try as best we can to undertake those jobs and to do the best possible job we can.

Senator, during this confirmation process, I've learned a lot. I've had the opportunity to be exposed to a lot of new opinions. I've been exposed to a lot of concerns. And it's given me a lot of opportunity to think. I think, Mr. Chairman, that if I'm confirmed, I would pledge to you and to the other Senators of the committee and the other Senators on the Hill and the House Members that I will do everything I can to do the best job I can. And I would appreciate, if I'm confirmed, your continued advice as to what the right thing is. So often I find myself in a position in the past where it's very difficult to know what the right thing is, and I would very much appreciate your advice and that advice of the other members of the committee, when we get into the difficult issues of the future, on what is the right thing.

If I'm confirmed, I would pledge to you, Mr. Chairman, that I will seek your advice and the advice of the members of the committee and the constituency groups to try to do the best I can, to find out what the right thing is.

The CHAIRMAN. Thank you, Mr. Cason. At this time it would be my intention to move to the public witnesses. You're welcome to stay or leave, whichever you prefer to do. Obviously, they are going to be discussing your qualifications. If you request at any time to respond either in testimony or in writing to anything said by any of the public witnesses, naturally that time will be granted to you out of fairness.

Mr. CASON. Thank you, Mr. Chairman.

One other thing I'd like to do, Mr. Chairman, before I leave, is you had asked a couple questions of me for some followup information in the hearing last week. I have had that information collected, and I'd like to submit it for the record, if that's OK.³

³ The material submitted is in response to testimony on pp. 101-102.

The CHAIRMAN. Thank you. The material will be inserted in the record at this point.

[The information of Mr. Cason follows:]

408 Constitution Avenue, NE
Washington, D.C. 20002
September 29, 1989

Honorable Patrick J. Leahy
Chairman, Committee on Agriculture,
Nutrition and Forestry
United States Senate
Washington, DC 20510-4502

Senator Leahy:

I deeply appreciated the opportunity you provided for the members of the Senate Agriculture Committee to discuss with me their key areas of interest regarding my nomination to the position of Assistant Secretary of Agriculture for Natural Resources and the Environment.

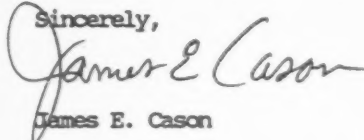
At the confirmation hearing on Wednesday, September 27, 1989 you requested further information on my involvement with land transfers between the National Park Service (NPS) and the Bureau of Land Management (BLM), as well as land acquisitions during my tenure at the Department of the Interior. We have found the following documents:

Attachment 1: Documents addressing H.R. 1214—a proposed transfer of lands from the BLM to the NPS. These documents show that I supported and approved such transfers.

Attachment 2: Available data on BLM land acquisitions and exchanges for the years 1986, 1987, and 1988. Sixty-nine acquisitions occurred in this three year period alone, primarily through the use of the Land and Water Conservation Fund as mandated by Congress. During this same period, 190 BLM land exchanges, designed to meet a variety of management purposes including the protection of environmentally sensitive areas, increased BLM's land inventory by 466,294 acres.

Please contact me if you need any additional information. Again, thank you for looking into these matters as part of the confirmation process.

Sincerely,



James E. Cason

cc: Honorable Richard G. Lugar

BLM/NPS LAND TRANSFERS

The following documents were found in our files relating to a review of H.R. 1214, a bill providing for the transfer of lands under BLM jurisdiction to units of the National Park System. The note below was found attached to the Draft version of the letter and it indicates a desire on my part to ensure that all areas suitable for transfer were identified by BLM. Further, it notes that we believed some areas were suitable for transfer out of BLM to the park system even though the areas may not have met all of the National Park Service's criteria.

Mary:

Here's the latest draft of
our response on H.R. 1214.
As you'll note we have put
pressure on BLM State Directors
to investigate each area and to
be reasonable. We have even offered
areas not requested!! Call me if you have
questions - Jason

As indicated by the surnames on the official file copy, I supported the evaluation and the suitability of these lands for management by the National Park Service rather than the BLM.

A specific proposal to transfer these lands was withheld pending resolution of the court case. I do not know the exact status of these lands at the present time.

Honorable John F. Seiberling
Chairman, Subcommittee on Public
Lands and National Parks
Committee on Interior and
Insular Affairs
House of Representatives
Washington, D.C. 20515

DRAFT

Dear Mr. Seiberling:

On March 30, 1984, the Director of the National Park Service (NPS) testified before your subcommittee concerning H.R. 1214, a bill that would provide for the transfer of certain lands currently under the jurisdiction of the Bureau of Land Management (BLM) to 12 specific units of the National Park System. While the Administration opposed the enactment of H.R. 1214 at that hearing, we requested additional time to prepare resource assessments to determine the suitability of adding the lands to the various units of the National Park System. We made a commitment at that time to have the resource assessments and recommendations transmitted to you by September 1, 1984, and we apologize for the delay.

The areas in H.R. 1214 are currently being managed to prevent impairment of their suitability for wilderness designation, subject to valid existing rights, under terms of a preliminary injunction from a U.S. District Court in Sierra Club v. Watt. In June, I testified before the Subcommittee on Public Lands and National Parks that we would await the decision of the court before taking action on the affected areas. I urge Congress to wait for the court's decision before proceeding on this legislation, because the concerns that led to introduction of H.R. 1214 may well be satisfied without the need for legislation.

If the plaintiffs prevail in court, the BLM will likely be ordered to place the areas under wilderness study and continue to manage them so as to prevent impairment of wilderness suitability. When the wilderness studies have been completed, the Secretary will submit any resulting wilderness proposals through the President to the Congress for final action. Any legislation that would change administrative management of these areas would be in order at that time, with the full record of the study as a sound basis for legislative action. One of the options to be considered at that time would be to transfer to the NPS administration of these areas.

Currently, some of the areas in H.R. 1214 are under wilderness study pursuant to section 202 of the Federal Land Policy and Management Act (FLPMA). If the BLM prevails in court, those areas would remain in the study process. The remaining areas in H.R. 1214 would be returned to management under authority of Section 302 of FLPMA employing the principles of multiple use and sustained yield. At that time, should multiple-use management of these areas create resource conflicts, the BLM would participate in developing cooperative management agreements with the NPS which would address specific issues of concern to NPS.

The NPS assessment process has been completed, and recommendations have been developed. During the resource assessment process, NPS staff also developed alternative boundaries, if necessary for management purposes, for those WSA's that were determined suitable for inclusion within the adjacent park boundaries. The criteria against which the WSA's were evaluated include:

1. Did the lands being considered possess significant scenic, scientific, cultural, and recreational values that importantly supplement or complement those originally authorized?
2. Did the lands being considered fill a management or administrative need? For example, back country public use, trail continuity, or protection of sensitive plant or wildlife areas may suggest a need for a change in the park boundary.

Unlike the BLM planning system, within which the wilderness studies are conducted, these two criteria do not evaluate other resource uses, values and commitments, such as mineral leases, water needs, cultural values, and hunting activities. These existing resource commitments make transfer of management for certain areas to the NPS, with its more limited mandate, more difficult. In addition, there has been no opportunity for public comment and review of the NPS assessment and recommendations. Public review is a requirement and important part of BLM's planning system.

The long-term management of the areas would be addressed when BLM develops its next land use plans for those lands. The possibility of transferring areas to NPS administration could be considered at that time, and NPS would be consulted during the planning process. For any area found, through the planning process, to be suitable for transfer to NPS administration, legislation would be proposed by the Department to accomplish the transfer.

In summary, the Department has a process for addressing and resolving the resource concerns which might be raised by the NPS. Given an opportunity to let this objective process work, the Department will be able to resolve any concerns involving the administration of BLM lands near NPS boundaries. In addition, it would be premature at this point to act on these areas until the BLM studies are complete and a decision is rendered in the case of Sierra Club v. Watt.

Out of the 31 areas affected by H.R. 1214, the National Park Service concluded that 14 areas are not suitable for inclusion in adjacent park areas. Therefore, those 14 areas will remain under BLM management.

We have no objection to transferring the following 4 areas to NPS because they are isolated by park and private lands and are uneconomical for BLM to manage, and represent logical additions to NPS lands. The BLM map number and BLM wilderness study area (WSA) acreage are included for each of the areas listed below.

- (1) Spring Canyon (UT-040-148, BLM WSA: 4,433). The BLM proposes to transfer 1,607 acres to Zion National Park. The 1,607 acres is adjacent to the park. The remaining 2,825-acre parcel lies to the north and is separated from the 1,607-acre tract by State and private lands. The northern parcel is important for grazing and is the site of a proposed dam to provide water for the town of Kanarraville.
- (2) Red Butte (UT-040-147, BLM WSA: 804 acres). The BLM proposes to transfer the entire 804 acres to Zion National Park.
- (3) Taylor Creek (UT-040-154, BLM WSA: 37 acres). The BLM proposes to transfer the entire 75-acre parcel which was considered during the inventory process, to Zion National Park.
- (4) Bear Trap (UT-040-177, BLM WSA: 40 acres). The BLM proposes to transfer the entire 40 acres to Zion National Park.

The BLM map number, BLM WSA acreage and NPS proposed acquisition are included for each of the areas listed below. The following two WSA's have been determined to be suitable for inclusion in Zion National Park:

- (5) The Watchman (UT-040-149, BLM WSA: 600 acres; NPS proposal: 600 acres). We have no objection to adding the entire 600 acres to the Park.
- (6) Goose Creek Canyon (UT-040-176, BLM WSA: 89 acres; NPS proposal: 120 acres). The 120-acre tract is isolated by Park and private land and would be uneconomic to manage by BLM. The 31-acre difference in the NPS proposal includes the lands north of the 4-wheel drive route BLM dropped from study status because the vehicle route was considered a noticeable intrusion on the naturalness of the area. For this reason, we have no objection to the transfer of the entire 120-acre parcel.

Of the 11 remaining areas cited in H.R. 1214, 5 are presently being studied under Section 202 of FLPMA through the BLM's multiple-use planning process. This process is generally the same as for lands being studied under section 603. The wilderness study process is comprehensive, considers all resource values, and provides opportunities for public comment. The BLM study policy requires that the following two criteria be applied to study areas: (1) evaluation of the wilderness values with consideration of the mandatory wilderness characteristics, special features, multiple-use benefits, and diversity of the Natural Wilderness Preservation System; (2) determination of whether an area is capable of being effectively managed to preserve its wilderness character. No action should be taken on these 5 areas until the studies are completed.

Those areas under section 202 study are:

(7) Pinnacles National Monument (CA-040-303, BLM WSA: 5,838 acres; NPS proposal: 2,200 acres). The NPS recommends transfer of 2,200 acres to Pinnacles National Monument which consists of several tracts, each containing less than 5,000 acres. The proposed action in the Central California Draft Environmental Impact Statement (EIS), issued in May 1982, was that 2,200 acres were suitable for wilderness designation with administration by the park superintendent through legislative transfer upon designation as wilderness. The suitable acreage in the proposed action is that portion of the land which is the view-shed into the park. In response to public input and additional data, the State Director has changed his proposed action to have the BLM retain administration of the recommended suitable area. The Director will be making a recommendation to the Secretary in 1987 after the mineral survey is complete. Concerns of the local populace over restrictions on hunting and livestock grazing were brought out during the study process. Such a transfer would adversely impact multiple-use management, and we recommend no action until the study is complete.

(8) Orderville Canyon (UT-040-145, BLM WSA: 1,750 acres; NPS proposal: 2,080 acres). The NPS recommends transfer of 2,080 acres to Zion National Park. The rationale for adding 330 acres is to include most of the gulches and hollows that form the Orderville Canyon system. If the transfer is made, the acreage should be 2,180 acres for a more appropriate boundary. This is one of four areas being studied for wilderness under section 202 in the Utah statewide wilderness study. The Draft Environmental Impact Statement (EIS) will be published for public comment in the summer of 1985, and final EIS submitted by the Utah State Office to the Director in the winter of 1986. The "preliminary planning recommendation," issued to the public is that all four areas are nonsuitable. Such a transfer would not adversely impact multiple-use management, but we recommend no action until the study is complete.

(9) Deer Creek (UT-040-146, BLM WSA: 3,320 acres; NPS proposal: 3,730 acres). This area would be transferred to Zion National Park. The NPS rationale for 410 additional acres is to preserve Volcano Knoll land form and provide access to the canyon. This area is also being studied in the Utah statewide wilderness study, with a preliminary planning recommendation of nonsuitable. The transfer of this parcel would jeopardize completion of the land exchange between BLM and an adjacent land owner. The purpose of the exchange is to block ownerships and to provide public access to the upper canyon. Completion of the exchange is dependent upon the proponent being able to maintain his existing grazing rights. Transferring the parcel to the NPS would cause the proponent to lose the grazing privileges on those lands. Approximately 60 percent of the permittee's allotment is in the WSA and he is dependent on the BLM lease. Extending the park area 3 miles north would also cause additional problems for livestock management on the remaining lands. Fences would need to be built and maintained to prevent livestock trespass on the park. Such a transfer would adversely impact multiple-use management, and we recommend no action until the study is complete.

(10) LaVerkin Creek Canyon (UT-040-153, BLM WSA: 567 acres; NPS proposal: 567 acres). This area is part of the Utah statewide wilderness study, with a preliminary planning recommendation of nonsuitable. The tract is isolated by park and private land and continued management by BLM would not be economically feasible. Such a transfer would not adversely impact multiple-use management, but we recommend no action until the study is complete.

(11) North Fork-Virgin River (UT-040-150, BLM WSA: 1,040 acres; NPS proposal: 1,040 acres). This area is part of the Utah statewide wilderness study, with a preliminary planning recommendation of nonsuitable. There is an indicated public interest in development of North Fork water for municipal water uses. The tract has potential for a dam site and water storage for this project. Southwestern Utah governments all have competitive interest in the Virgin River water rights and allocations. Such a transfer would adversely impact multiple-use management, and we recommend no action until the study is complete.

A discussion of the remaining 6 areas follows:

(12) Lonesome Ridge (NM-060-801, BLM WSA: 3,426 acres; NPS proposal: 3,426 acres). This area, which NPS has proposed for transfer to the Carlsbad Caverns National Park, is being studied under authority of section 202 for Natural Area or Scenic Area designation as part of the Carlsbad Resource Management Plan. The draft EIS is scheduled for publication in fiscal year 1985, with the final EIS scheduled for fiscal year 1986. This area is a portion of the highly scenic Guadalupe Escarpment which extends from the Carlsbad Caverns National Park to the Guadalupe Mountains National Park. However, the area is not adjacent to either of those parks. The area is surrounded by national forest and logical access is only through Forest Service lands. Such a transfer would adversely impact multiple-use management, and we recommend no action until the plan is complete.

(13) Pinto Basin (CDCA 334A, BLM WSA: 4,480 acres; NPS proposal: 4,480 acres). The area's northern and western boundaries are contiguous to the Joshua Tree National Monument. The area has potential for metals and limestone and is located near the open pit of the Eagle Mountain Mine. The proposed action in the California Desert Plan of 1980 was to recommend the area as nonsuitable for wilderness designation since the geologic, energy, and minerals resources values were more significant than wilderness values. Final determinations on the wilderness element of the California Desert plan are expected in 1987, upon completion of all of the mineral inventory information. Such a transfer would adversely impact multiple-use management, and we recommend no action until the plan is complete.

(14) Daniels Canyon (UT-080-414, BLM WSA: 2,496; NPS proposal: 5,818 acres). The original BLM study area contains about 2,496 acres on the southeast boundary of the Dinosaur National Monument. The NPS is

recommending a 5,818-acre addition to the park, including 640 acres of State lands offered by the State for transfer under Project Bold, 320 acres of private lands, with the remainder public land. Incorporating these boundary changes as proposed by NPS would prove costly. The NPS rationale for the additional acreage is to take into consideration the scenic, scientific, cultural, and recreational values that supplement those within the current park boundary. Elimination of hunting from the area would cause additional overpopulation of big game. There are four grazing permittees using the area and loss of these grazing allocations would decrease three by 5 percent and one by 100 percent. Two stockwater reservoirs are located within the proposed area. These reservoirs are essential for grazing management outside the NPS proposed area. Implementing the proposal would require constructing new reservoirs at a cost of \$2,000 each. For these reasons, such a transfer would adversely impact multiple-use management.

(15) Lost Spring Canyon (UT-060-131B, BLM WSA: 3,880 acres; NPS proposal: 2,882 acres). The area selected by the NPS is for addition to Arches National Park. The difference in acreage is that NPS identified only the canyon system for transfer. The permittee uses these areas during the coldest part of the grazing season because of sheltered conditions making this especially important to the rancher even though it would affect only 5 percent of the allotment. Past Park boundary changes have reduced the original size of the allotment. The BLM would permit off-road vehicle access and NPS would not. Park management might place an additional maintenance burden upon Northwest Pipeline right-of-way and could prevent changing the configuration of the pipeline if that became necessary. For these reasons, such a transfer would adversely impact multiple-use management.

(16) Tincanebitta (AZ-1-105C, BLM WSA: 2,715 acres; NPS proposal: 2,715 acres). There is presently congressional interest to resolve issues involving the intermingled land patterns in the area. The proposed action in BLM's Arizona Strip Wilderness Draft EIS was to recommend this area as not suitable for wilderness designation. In addition, a NPS task force study, entitled The Final Adjacent Land Study for the Grand Canyon National Park/Arizona dated August 1981, concluded that existing agency management responsibilities for the study area lands remain unchanged. There is also 1,300 acres of split estate lands with the mineral estate owned by private entities which would create an additional conflict if the lands were transferred. For these reasons, such a transfer would adversely impact multiple-use management.

(17) Grapevine Wash (AZ-2-14, BLM WSA: 2,200 acres; NPS proposal: 2,200 acres). This area would not be a logical addition to the Grand Canyon National Park. Although the eastern boundary is adjacent to the Grand Canyon National Park, the area lies mostly within the Lake Mead National Recreation Area. The north and west boundaries are adjacent to the Lake Mead National Recreation Area. There is interest in providing private and State developed recreational opportunities on the south side of Lake Mead. The State of Arizona has also exhibited interest in selecting lands in the in-lieu program. We recommend the Governor be consulted. Generally, there are no resource conflicts in the area. Such a transfer would not adversely impact multiple-use management.

These assessments and preliminary determinations have been prepared as a service to you. Because these lands are still subject to the pending litigation, we must continue to oppose the enactment of H.R. 1214 at this time.

The Office of Management and Budget has advised us that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

William Clark



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable John F. Seiberling
Committee on Interior and
Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Seiberling:

On March 30, 1984, the Director of the National Park Service (NPS) testified before the Subcommittee on Public Lands and National Parks concerning H.R. 1214, a bill in the 98th Congress to transfer certain lands currently under the jurisdiction of the Bureau of Land Management (BLM) to 12 specific units of the National Park System. While the Administration opposed the enactment of H.R. 1214 at that hearing, we requested additional time to prepare resource assessments to determine the suitability of adding the lands to the various units of the National Park System. Although we made a commitment at that time to have the resource assessments and recommendations transmitted to you by September 1, 1984, analysis of an Administration position took much longer than we anticipated, and we apologize for the delay.

The areas mentioned in the legislation are currently being managed to prevent impairment of their suitability for wilderness designation, subject to valid existing rights, under terms of a preliminary injunction from a U.S. District Court in Sierra Club v. Watt. In June of 1984, I testified before the Subcommittee on Public Lands and National Parks that we would await the decision of the court before taking action on the affected areas regarding their wilderness values. As to the suitability of transferring these areas to the National Park System, however, we would prefer that any legislation to change administrative management of these areas be delayed until the case is settled. Nonetheless, our analysis shows that it would be appropriate to transfer some of these areas from BLM to the National Park Service regardless of the outcome of the litigation. Therefore, we present our analysis to you with the understanding that it relates only to the suitability of these areas for NPS administration and not as a direct proposal to transfer them at the present time.

The NPS assessment process was completed in 1984, and recommendations were developed on the preliminary field analysis. During the resource assessment process, we also developed alternative boundaries, if necessary for management purposes, for those Wilderness Study Areas (WSA's) that were determined suitable for inclusion within the adjacent park boundaries. The criteria against which the WSA's were evaluated include:

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NPS

DISC Mary 6 - H.R. 1214

FNP:PALipson 8/2/84
REVISED:LLM:CNewcomer 9/24/84
REDRAFT:LLM:CNewcomer 9/27/84
REVISED: PerOMB:RColeman:Satterfield 1/31/85:395-4993
REDRAFTED/RETYPED:MBradford:2/1/85
Cleared OMB:SSatterfield:2/4/85: RColeman:2/5/85



THE SECRETARY OF THE INTERIOR
WASHINGTON

February 6, 1985

Honorable John F. Seiberling
Committee on Interior and
Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Seiberling:

On March 30, 1984, the Director of the National Park Service (NPS) testified before the Subcommittee on Public Lands and National Parks concerning H.R. 1214, a bill in the 98th Congress to transfer certain lands currently under the jurisdiction of the Bureau of Land Management (BLM) to 12 specific units of the National Park System. While the Administration opposed the enactment of H.R. 1214 at that hearing, we requested additional time to prepare resource assessments to determine the suitability of adding the lands to the various units of the National Park System. Although we made a commitment at that time to have the resource assessments and recommendations transmitted to you by September 1, 1984, analysis of an Administration position took much longer than we anticipated, and we apologize for the delay.

The areas mentioned in the legislation are currently being managed to prevent impairment of their suitability for wilderness designation, subject to valid existing rights, under terms of a preliminary injunction from a U.S. District Court in Sierra Club v. Watt. In June of 1984, I testified before the Subcommittee on Public Lands and National Parks that we would await the decision of the court before taking action on the affected areas regarding their wilderness values. As to the suitability of transferring these areas to the National Park System, however, we would prefer that any legislation to change administrative management of these areas be delayed until the case is settled. Nonetheless, our analysis shows that it would be appropriate to transfer some of these areas from BLM to the National Park Service regardless of the outcome of the litigation. Therefore, we present our analysis to you with the understanding that it relates only to the suitability of these areas for NPS administration and not as a direct proposal to transfer them at the present time.

The NPS assessment process was completed in 1984, and recommendations were developed based on the preliminary field analysis. During the resource assessment process, NPS staff also developed alternative boundaries, if necessary for management purposes, for those Wilderness Study Areas (WSA's) that were determined suitable for inclusion within the adjacent park boundaries. The criteria against which the WSA's were evaluated include:

Although they did not meet all the NPS criteria, we would have no objection to transferring the last four of these areas from BLM to NPS anyway, because they are isolated by park and private lands and are uneconomical for BLM to manage. The BLM map number and BLM wilderness study area (WSA) acreage are included for each of the areas listed below that we do recommend for transfer from BLM to NPS:

(1) Spring Canyon (UT-040-148, BLM WSA: 4,433 acres). 1,607 acres may be transferred to Zion National Park. The 1,607 acres are in a parcel adjacent to the park. The remaining 2,825-acre parcel lies to the north and is separated from the 1,607-acre tract by State and private lands. The northern parcel is important for grazing and is the site of a proposed dam to provide water for the town of Kanarrville.

(2) Red Butte (UT-040-147, BLM WSA: 804 acres). The entire 804 acres may be transferred to Zion National Park.

(3) Taylor Creek (UT-040-154, BLM WSA: 37 acres). The entire 75-acre parcel which was considered during the inventory process may be transferred to Zion National Park.

(4) Bear Trap (UT-040-177, BLM WSA: 40 acres). The entire 40 acres may be transferred to Zion National Park.

The following areas meet both NPS and BLM criteria for transfer:

(5) The Watchman (UT-040-149, BLM WSA: 600 acres). The entire 600 acres is suitable for transfer to Zion National Park.

(6) Goose Creek Canyon (UT-040-176, BLM WSA: 89 acres; NPS proposal: 120 acres). The 120-acre tract is isolated by park and private land meets NPS suitability criteria, and would be uneconomic to manage by BLM. The 31-acre difference in the NPS proposal includes the lands north of the 4-wheel drive route BLM dropped from study status because the vehicle route was considered a noticeable intrusion on the naturalness of the area. For this reason, the entire 120 acre parcel is suitable for transfer to Zion National Park.

Of the 11 remaining areas cited in H.R. 1214, five are presently being studied under section 202 of FLPMA through the BLM's multiple-use planning process. This process is generally the same as for lands being studied under section 603. The wilderness study process is comprehensive, considers all resource values, and provides opportunities for public comment. The BLM study policy requires that the following two criteria be applied to study areas: (1) evaluation of the wilderness values with consideration of the mandatory wilderness characteristics, special features, multiple-use benefits, and diversity of the Natural Wilderness Preservation System; (2) determination of whether an area is capable of being effectively managed to preserve its wilderness character. While we would prefer to complete the study process, it does not appear that transfer of two of these areas would adversely affect multiple use management:

1. Did the lands being considered possess significant scenic, scientific, cultural, and recreational values that importantly supplement or complement those originally authorized?

2. Did the lands being considered fill a management or administrative need? For example, back country public use, trail continuity, or protection of sensitive plant or wildlife areas may suggest a need for a change in the park boundary.

Unlike the standards for the BLM planning system, within which wilderness studies are conducted, these two criteria do not evaluate other resource uses, values and commitments, such as mineral leases, water needs, and hunting activities. These existing resource commitments make transfer of management for certain areas to the NPS, with its more limited mandate, more difficult. In addition, there has been no opportunity for public comment and review of the NPS assessment and recommendations. Currently, some of these areas are under wilderness study pursuant to section 202 of the Federal Land Policy and Management Act (FLPMA), and public review is a requirement and important part of that process.

Therefore, we have balanced the NPS field assessment with the recommendations of the BLM in this report.

Out of the 31 areas affected by H.R. 1214, the National Park Service concluded that 18 of those areas are not suitable for inclusion in adjacent park units and should remain under BLM management. The areas which the National Park Service rated not suitable are:

- (1) Ibex Springs (CDCA-149A)
- (2) Milk Ranch-Case Mountain (CA-010-023)
- (3) Sheep Ridge (CA-010-022)
- (4) Dansil Canyon (AZ-1-96A)
- (5) G & F (AZ-1-99)
- (6) Van Deeman (AZ-2-7)
- (7) Mt. Davis (AZ-2-21)
- (8) Jumbo Springs (NV-5-236)
- (9) CO-1-224
- (10) CO-1-224A
- (11) CO-1-226
- (12) Sand Castle (CO-5-135)
- (13) Fremont Gorge (UT-050-221)
- (14) Mudgetts (NM-060-819)
- (15) Red Butte (UT-040-147)
- (16) Spring Creek Canyon (UT-040-148)
- (17) Taylor Creek Canyon (UT-040-154)
- (18) Bear Trap (UT-040-177)

Attachment A contains the assessments of these areas and the reasons why the NPS found these areas to be unsuitable.

(7) Orderville Canyon (UT-040-145, BLM WSA: 1,750 acres; NPS proposal: 2,080 acres). The NPS recommends transfer of 2,080 acres to Zion National Park. The rationale for adding 330 acres is to include most of the gulches and hollows that form the Orderville Canyon system. The BLM recommends 2,180 acres for a more appropriate boundary. This is one of four areas being studied for wilderness under section 202 in the Utah statewide wilderness study. The Draft Environmental Impact Statement (EIS) will be published for public comment in the summer of 1985, and final EIS submitted by the Utah State Office to the Director in the winter of 1986. The "preliminary planning recommendation," issued to the public is that all four areas are nonsuitable for wilderness.

(8) LaVerkin Creek Canyon (UT-040-153, BLM WSA: 567 acres). This area is part of the Utah statewide wilderness study, with a preliminary planning recommendation of nonsuitable as wilderness. The tract is isolated by park and private land and continued management by BLM would not be economically feasible.

It appears that transfer of the following areas could adversely affect multiple use management, and we prefer that any ongoing section 202 studies be completed before transfer is contemplated:

(9) Pinnacles National Monument (CA-040-303, BLM WSA: 5,838 acres; NPS proposal: 2,200 acres). The NPS recommends transfer of 2,200 acres to Pinnacles National Monument. The proposed action in the Central California Draft Environmental Impact Statement (EIS), issued in May 1982, was that 2,200 acres were suitable for wilderness designation with administration by the park superintendent through legislative transfer upon designation as wilderness. The suitable acreage in the proposed action is that portion of the land which is the viewshed into the park. In response to public input and additional data, however, the BLM State Director then changed his proposed action to have BLM retain administration of the recommended suitable area. The BLM Director will be making a recommendation to the Secretary in 1987 after the mineral survey is complete. Concerns of the local populace over restrictions on hunting and livestock grazing were brought out during the study process.

(10) Deep Creek (UT-040-146, BLM WSA: 3,320 acres; NPS proposal: 3,730 acres). This area has been proposed for transfer to Zion National Park. The NPS rationale for 410 additional acres is to preserve Volcano Knoll land form and provide access to the canyon. This area is also being studied in the Utah statewide wilderness study, with a preliminary planning recommendation of nonsuitable for wilderness. The transfer of this parcel would jeopardize completion of a land exchange between BLM and an adjacent land owner. The purpose of the exchange is to block ownerships and to provide public access to the upper canyon. Completion of the exchange is dependent upon the proponent being able to maintain his existing grazing rights. Transferring the parcel to the NPS would cause the proponent to lose the grazing privileges on those lands. Approximately 60 percent of the permittee's allotment is in the WSA and he is dependent on the BLM lease. Extending the park area three miles north would also cause additional problems for livestock management on the remaining lands. Fences would need to be built and maintained to prevent livestock trespass on the park.

(11) North Fork-Virgin River (UT-040-150, BLM WSA: 1,040 acres). This area is also part of the Utah statewide wilderness study, with a preliminary planning recommendation of nonsuitable for wilderness. There is an indicated public interest in development of North Fork water for municipal water uses. The tract has potential for a dam site and water storage for this project. Southwestern Utah governments all have competitive interest in the Virgin River water rights and allocations.

(12) Lonesome Ridge (NM-060-801, BLM WSA: 3,426 acres). This area, proposed for transfer to the Carlsbad Caverns National Park, is being studied under authority of section 202 for Natural Area or Scenic Area designation as part of the Carlsbad Resource Management Plan. The draft EIS is scheduled for publication in fiscal year 1985, with the final EIS scheduled for fiscal year 1986. This area is a portion of the highly scenic Guadalupe Escarpment which extends from the Carlsbad Caverns National Park to the Guadalupe Mountains National Park. The area is surrounded by national forest and logical access is only through Forest Service lands.

(13) Pinto Basin (CDCA 334A, BLM WSA: 4,480 acres). The area's northern and western boundaries are contiguous to the Joshua Tree National Monument. The area has potential for metals and limestone and is located near the open pit of the Eagle Mountain Mine. The proposed action in the California Desert Plan of 1980 was to recommend the area as nonsuitable for wilderness designation since the geologic, energy, and minerals resources values were more significant than wilderness values. Final determinations on the wilderness element of the California Desert Plan are expected in 1987, upon completion of all of the mineral inventory information.

(14) Daniels Canyon (UT-080-414, BLM WSA: 2,496; NPS proposal: 5,818 acres). The original BLM study area contains about 2,496 acres on the southeast boundary of Dinosaur National Monument. The NPS is recommending a 5,818-acre addition to the park, including 640 acres of State lands offered by the State for transfer under Project Bold and 320 acres of private lands, with the remainder public land. The NPS rationale for the additional acreage is to take into consideration the scenic, scientific, cultural, and recreational values that supplement those within the current park boundary. Concern remains that elimination of hunting from the area would cause additional overpopulation of big game. In addition, there are four grazing permittees using the area, and loss of these grazing allocations would decrease three by five percent and one by 100 percent. Two stockwater reservoirs are located within the proposed area. These reservoirs are essential for grazing management outside the NPS proposed area. Implementing the proposed transfer would require constructing new reservoirs at a cost of \$2,000 each.

(15) Lost Spring Canyon (UT-060-131B, BLM WSA: 3,880 acres; NPS proposal: 2,882 acres). The area is proposed for transfer to Arches National Park. The difference in acreage represents NPS identification of only the canyon system for transfer. A permittee uses these sheltered areas during the coldest part of the grazing season and they are important to the rancher even though it would affect only five percent of the allotment. Past park boundary changes have reduced the original size of the allotment. The BLM would permit off-road vehicle access and NPS would not. Park management might place an additional maintenance burden upon the Northwest Pipeline right-of-way and could prevent changing the configuration of the pipeline if that became necessary.

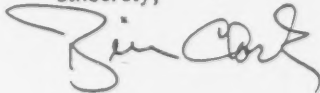
(16) Tincanbitts (AZ-1-105C, BLM WSA: 2,715 acres). This is an area of intermingled land management. The proposed action in BLM's Arizona Strip Wilderness Draft EIS was to recommend this area as not suitable for wilderness designation. In addition, a NPS task force study, entitled The Final Adjacent Land Study for the Grand Canyon National Park/Arizona, dated August 1981, concluded that existing agency management responsibilities for the study area lands remain unchanged. There are also 1,300 acres of split estate lands, with the mineral estate owned by private entities. This could create an additional conflict if the lands were transferred.

(17) Grapevine Wash (AZ-2-14, BLM WSA: 2,200 acres). Although there is some dispute over whether this area would be a logical addition to Grand Canyon National Park or to Lake Mead National Recreation Area, the north and west boundaries are adjacent to the Lake Mead area. There is interest in providing private and State development of recreational opportunities on the south side of Lake Mead. The State of Arizona has also exhibited interest in selecting lands in the in-lieu program. We recommend that the Governor be consulted, but generally there are no resource conflicts in the area.

These assessments and preliminary determinations have been prepared as a service to you. Because these lands are still subject to the pending litigation regarding wilderness study, we must continue to recommend deferral of legislation such as H.R. 1214 at this time.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,



William Clark

Enclosure

ATTACHMENT A
Preliminary Field Assessment
National Park Service

ATTACHMENT A
Preliminary Field Assessment
National Park Service

NARRATIVE SUMMARY OF
RESOURCE ASSESSMENTS FOR H.R. 1214

PARK

Death Valley National Monument

Death Valley NM, encompassing more than 2 million acres in CA and NV, contains outstanding geological features and diverse, fragile ecosystems. It is nearly surrounded by high mountains and contains the lowest in the Western Hemisphere. Remnants of gold/borax mining activity are evident. Precipitous canyons pour alluvial fans onto the fault-formed basin floor. Badlands, saltwater and dry lakes, and forested mountain peaks are found here. Many plants and animals are sustained in Death Valley N.M.

WSA

The Inex Spring WSA 194A contains approximately 2,346 acres, a roadless area located on the southeast portion of the NM boundary. Surveys indicate no unusual plant assemblages or sensitive habitat. Topography is characterized by hills, with the central feature being a steep, arcuate ridge intricately dissected by small canyons/large washes opening into alluvial fans draining northeast/northeast/southwest. Seismic qualities are low; however, the area presents potential for solitude because of its primitive nature. Current and potential uses include six (6) mining claims (2 placer & 4 lode), no known potential for oil and gas and no outstanding leases; medium potential for geothermal, some potential for radioactive minerals, relatively little potential for metallic and non-metallic deposits; no grazing and no developable water sources.

RECOMMENDATION/WHY

NPS does not recommend inclusion of the WSA or any portion of it. WSA does not contain significant resources different or complementary to those found in the monument. The values contained in WSA are common both to the NM and to the vast acreages of public domain land found contiguous to Death Valley. Also, no significant resources of the NM would be impacted by potential uses on the WSA. Further, the addition fills no management need such as a logical extension to the boundaries to follow natural features. On the contrary, its addition would create further management problems through inclusion of existing mining claims and ORV access from adjacent roads.

PARKPinnacles National Monument

The resources of the monument include volcanic formations, talus caves, visually pleasing chaparral-covered mountain terrain with narrow, walled valleys and small streams. Wildflower displays are abundant in season and many species of animal and bird life are native to the monument. Preservation and scientific value of the chaparral community is equally as important as that of the pinnacles formations themselves. Identification and preservation of this chaparral community becomes more and more important as vast areas of CA's native vegetation vanish under development and pressures of grazing. The area contains over 16,000 acres.

NSA

The NSA contains five separate parcels of contiguous, roadside land and are contiguous to Pinnacles wilderness. Consisting of 5,838 acres, this area contains steep, rugged topography surrounding small canyons. The primary vegetation of the area is chaparral with some oak and pine occurring along intermittent creeks. The separate parcels of the study area blend in naturally with the rugged terrain within the monument wilderness area. No known cultural resources exist in the NSA. All units offer recreational opportunities for hikers and extensive vistas into the Pinnacles wilderness. Also, Pinnacles Buckheat is found in one of the parcels, and is a Category 2 candidate endangered species. Current and potential uses include oil, gas, or mineral activity, no known claims or outstanding claims. Four ranchmen hold grazing permits and 91 AUM's; grazing use is low and a relatively small part of ranchers' operations. Low levels of hunting by private clubs.

RECOMMENDATION/WHY

NPS recommends that portions of the five areas be added to the NM so that boundaries will follow topographic and ecosystem lines. The total recommendation of 2,800 acres includes about 160 acres of private land and 200 acres of BLM-administered land outside of the NSA. This alternative boundary would protect important scenic resources from potential development in the future, add significant riparian habitat of value to NM wildlife, allow for fencing to protect vegetation from trespass grazing by cattle and feral hogs, and avoid interfering with grazing on less sensitive areas on adjacent land.

PARK

Sequoia-Kings Canyon National Parks
 Consisting of more than 860,000 acres, the parks are predominately mountains and canyons, including a complete spectrum of life zones from foothill elevations of 2000' to Mount Whitney, 14,494', the highest point in the coterminous United States. They contain lakes in basins etched out of granite by ancient glaciers as well as high meadows. Vegetation is very diverse and includes famous giant sequoia groves. The forests are outstanding examples of pristine vegetation of the west slope of the Sierra. Outside the parks, similar ecosystems have been completely altered by man. The parks provide a native habitat for a variety of fish and wildlife, including the potentially threatened CA Bighorn Sheep and the Little Kern Golden Trout. Archeological and historical resources are present.

USA

The MILK RANCH-CASE MOUNTAIN USA contains 5,742 acres consisting of 2 separate units within a larger area. While Case Mountain has a few stands of giant sequoia trees, the foothill terrain and predominant vegetation are not spectacular. Both areas are important winter habitat for the deer herd that occupies the Mineral King area during the summer. It represents a feeding area for the Bald Eagle although it is no more significant in this respect than the broad expanse of surrounding foothill areas. The area is part of a prehistoric Indian territory and may contain some remains; however, there is no reason to expect extraordinary finds. Primary recreation includes hunting, ORV use, and limited hiking. Views to and from areas are diminished by smog from the Central Valley. The sequoia stands are protected by State regulation. SAGEHEN RIVER USA contains 4,905 acres. The dominant land feature is a steep ridge occupying the area. The open woodland oak/grass slopes are excellent habitat for deer, raccoons, and other normally occurring mammals of the area. The USA provides a feeding area for the Bald Eagle. Archeological and historic resources date similarly to the USA described above. Recreation includes fishing, hunting, and water-related activities. Views to and from the USA are diminished by smog from the Central

RECOMMENDATION/MY

NPS does not recommend the addition of either USA or any portion thereof. Neither USA has been found to contain resources of significance to Sequoia National Park, and neither USA presents the opportunity to improve the management of the park boundary. In fact, stellar resources are adequately represented in the park and the inclusion of the areas would be expected to complicate management and to increase costs therefore.

PARK

Great Sand Dunes National Monument
 Consisting of over 30,000 acres,
 this NM is primarily an area of
 geological and scenic significance,
 with important secondary biological,
 historical, and archeological values.
 The NM contains the tallest & most
 spectacular sand dunes in the US.
 These dunes extend for about 10 miles
 along the west base of the massive
 Sangre de Cristo Mountains. The
 average dune elevation is 8200'.
 Augmenting the 50 square miles of
 sand dunes and their mountain back-
 drop are several square miles of
 "roughlands" which contain numerous
 escape dunes, those smaller dunes
 that have crossed Medano Creek to
 the east and are no longer contigu-
 ous with the main dune mass. For
 hundreds of centuries the prevailing
 southwesterly winds have carried
 swirls of dust & sand with them.
 During the formation of the mountain
 a high bend or pocket appeared in
 the range near the northeastern end
 of the San Luis Valley. Through the
 years, erosion has worn in 3 places -
 Medano, Music, and Mosca Passes - in
 the nearby crest of the range. Winds
 sweeping across the valley and hemmed
 in by the pocket are forced to rise in
 order to escape, funneling upward
 through the three major canyons. In
 rising, the winds lose some of their
 velocity and drop most of the sand
 they have been carrying. It is the
 accumulation of this material through

USA

The Sand Castle USA consists of four
 individual parcels adjacent to the NM.
 Located adjacent to the boundary on
 the southwest side of the NM, the
 parcels are a considerable distance
 from the primary sand dune mass which
 was significant in the establishment
 of the NM. The three immediately
 adjacent parcels are basically flat
 sparsely vegetated landscapes,
 consisting of extremely sandy soils
 typical of the San Luis Valley. The
 fourth parcel is adjacent to the north
 boundary and is situated high on the
 foothills of the Sangre de Cristo
 mountain range. The majority of this
 unit is adjacent to the boundary of
 the Rio Grande National Forest and is
 more of a continuation of that geo-
 logic and ecology. While no signifi-
 cant cultural resources have been
 recorded in this USA, there may be
 some archeological values because the
 NM area itself is so productive.
 Recreation potential is not outstand-
 ing.

RECOMMENDATION/WHY

NPS does not recommend the inclusion of the Sand
 Castle USA or any portion thereof as it does not
 possess significant scenic, scientific, cultural,
 or recreation values that importantly supplement
 or complement those within the NM. Further, the
 USA does not fill a management or administrative
 need for resource protection or public use.

thousands of years that has formed
the "incredible domes."

PARK

Zion National Park

Consisting of about 146,500 acres in southeastern Utah on the western border of the Colorado Plateau province, the NP contains a series of colorful, deep, sheer-walled, narrow canyons. The outstanding feature of the NP is the spectacular Zion Canyon carved by the waters of the Virgin River. The view from the high timbered plateau country rimming this canyon system affords a glimpse of the dynamic process of canyon carving. Among the most interesting vegetation patterns is that known as the "hanging gardens". Wildlife in the NP is limited by the generally sparse vegetation and dry conditions. Pictographs and petroglyphs are found at several sites throughout the NP. Of historical significance, the tale of the struggle of the Mormons and other settlers is evident at several sites, most notably Cable Top Mountain.

MSA

There were proposed to be added to the NP two MSA's. During a Phase I analysis of the resources, four of the MSA's were eliminated from a more intensive survey because they did not meet the two specific threshold criteria. The remaining six follow: SADDLEBURN CANYON MSA contains about 1,750 acres along the eastern boundary of the NP. It contains spectacularly entrenched canyons and mesa tops. The canyons are narrow, primeval, serpentine, and are under-ately vegetated. The canyons contain excellent examples of the "hanging gardens", and wildlife include pronghorn, prairie falcons, and the spotted owl. The MSA provides access to the Virgin River system in the NP. Primitive and unconfined recreational opportunities include backpacking, rock-climbing, and bird-watching. The MSA is inaccessible to MSA's because of the terrain. SADDLEBURN CREEK MSA consists of 3,320 acres of great primitive recreation land north of the NP. The NP and MSA share a common border of about 3 miles, & the MSA is a natural extension of the existing resources in the park, containing sections of almost sheer canyon walls and access routes into the Zion Narrows canyon system. SADDLEBURN CREEK MSA is at the upper end of Goose Creek Canyon along the north-east border of the NP. Goose Creek, a tributary to the Virgin River, has its

RECOMMENDATION/WHY

NPS recommends that the MSA's known as Red Butte, Spring Canyon, Taylor Creek Canyon, and Bear Trap Canyon not be included within the boundaries of the NP because they do not meet the criteria of possessing resources that are significant from a scientific, scientific, cultural, or recreational point of view and do not importantly supplement or complement those within the current boundary. Further, they do not fill a management or administrative need for resource protection or public use. NPS recommends that the ORRIVERVILLE CANYON MSA be redefined with respect to existing grazing rights in the area, the topographic and ecological systems and the watershed, and that it be added to the NP. NPS recommends that the DEEP CREEK MSA be redefined along the topographic features to include the unique Volcanic Knoll landforms and that it be added to the NP. This would provide an important access to the northern section of Deep Creek and would provide protection of the natural drainage system. NPS recommends that THE WATCHMAN MSA be redefined to include the SHIMSHING MSA. This provides a more logical boundary that would permit NPS to provide and maintain public access (trail systems) to Patrimony Canyon which is one of the most popular hiking areas in the NP. This would also simplify management and administration. NPS further recommends the inclusion of NORTH FORK-VIRGIN RIVER MSA, LAVERKIN CREEK CANYON MSA, and GOOSE CREEK CANYON MSA as defined to provide and to maintain public access (trail system) and to simplify management and administration of the NP.

at Zion for ORSERVILLE, DEEP CREEK, CHISE
 CREEK, LAVERKIN, WATCHMAN, and NORTH FURK
 Total 264 Acre's. Mining/mineral interests
 include 1 oil/gas lease & 1 mining claim at
 ORSERVILLE, 2 oil/gas leases and 2 applications
 at DEEP CREEK, 1 oil/gas lease at CHISE CREEK,
 1 oil/gas lease at LAVERKIN, 3 oil/gas leases
 at WATCHMAN, and 1 oil/gas lease and 1 mining
 claim at NORTH FURK.

PARKCapital Reef National Park

Consisting of over 240,000 acres, the geologic importance of the NP is unique. The Waterpocket Fold, extending nearly 100 miles south from Thousand Lake Mountain, is nearly all within the park. That feature is considered by many geologists to be one of the best and most classic examples of a monoclinial flexure. Other important features include at least 15 sedimentary formations. Topographic features include arches, natural bridges, domes, hogbacks, cuestas, mesas, fins, dramatically eroded sandstone canyons and other formations. The very nature of natural processes creating a park of spectacular & scenic geologic beauty has also created an extremely varied and unusual array of habitats supporting diversified floral and faunal representations of the Colorado Plateau in Utah. Many microclimates and narrow niches exist and various endemic plant species have been discovered recently. Still, there is considerable to learn about the full significance of the NP biological, archeological, & geological resources and various research efforts are addressed to this lack of information.

USA

FRONTMONT CORNER USA is a 2,540 acre plateau which slopes gently north-west. The plateau is heavily eroded by deeply entrenched, meandering streams which drain eastward into the Frontmont River. The drainages are deep and narrow and are separated by narrow, high, relatively flat-topped ridges. While there have been no reported archeological or historical sites within the USA, there are a variety of sites outside the USA boundaries ranging from temporary camp-sites to villages and rock art sites.

RECOMMENDATION/WHY

NPS does not recommend inclusion of the USA or any portion thereof. The unit does not possess lands that are significant scenic, scientific, cultural, or recreational values that importantly supplement or complement those within the current NM boundary. Further, the USA does not fill a management or administrative need for resource protection or public use.

ties include hiking, backpacking, horseback riding, and photography. There is a growing use of dirt bikes in the canyons and washes, which presents a major management concern since access to the canyons of the NP is gained through the WSA. The noise and smoke caught in inversions jeopardizes the air quality, solitude, and wilderness aspects of the resource. Also the uncontrolled use of ORV's contribute to accelerated erosion and destroys vegetation and ground cover. There are 4 oil/gas leases and 1 application in WSA and a total of 418 AUM's within the entire WSA.

PARK

Carlsbad Caverns National Park. Consisting of over 46,000 acres, this NP includes a segment of the Captain Reef, a Permian barrier reef containing an extensive cavern system with outstanding formations. The primary cavern, Carlsbad Cavern, is one of about 70 known caves within the park boundary & one of 200-300 throughout the Guadalupe Ridge. The NP contains a portion of the Chihuahuan Desert and several deeply cut and spectacular canyons. Vegetation is typical of the difficult terrain and the hot/dry climate. One of the most interesting wildlife species in the bat community of the caves. Cultural resources include midden rings, mosaic pits, & some noteworthy polychrome pictographs in cave shelter sites in the NP. The many caves provide high potential for the preservation of datable evidence of early man & his association with now-extinct fauna.

USA

There is proposed to be added to the NP a USA known as Mudgetts USA containing 2,941 acres and located on the northeastern edge of Guadalupe Ridge. The country is characterized by numerous ridges which mark the horizontal bedding planes of the limestone deposits. The topography of the USA is basically an extension of that found within the NP. However, the USA lies within the Dark Canyon watershed, the major drainage for the east side of the northern Guadalupe Mountains which carries water during flash floods following heavy rains. The USA lies over the Captain aquifer. The proximity of the NP to the USA has created an interdependence in preserving the viewpoints. The air quality of the USA currently is excellent which is supportive of the Class I of the NP. There are four known caves in the USA and there is potential for undiscovered caves. The predominant vegetation is that of the Chihuahuan Desert. There are two Federally listed "threatened or endangered" plants in the NP on lands similar to those within the USA. There is potential for nesting sites for the peregrine falcon; however, no nests have been recorded in this area. There are species of wildlife listed by NM as threatened or endangered. There are at least two ring necked pheasants that have been recorded. Recreation potential includes primitive and unconfined recreation such as hunting, hiking.

RECOMMENDATION/WHY

NPS does not recommend inclusion of the USA or any portion thereof within the boundary of the NP. NPS believes that the USA does not possess resources or recreational opportunities that are significant. Further, NPS believes that the addition, while providing some resource protection, would be prohibitively expensive to acquire the oil and gas leases. Further, public opposition could be expected from ranchers, hunters, and those using ORV's.

backpacking, and cave exploration. Currently, no locatable minerals are known to occur within the WSA, and no mining claims exist within the unit. While this unit does contain deposits of calcite, sales of this mineral are not expected because existing pits near the WSA are within the acceptable hauling distance for nearby well paid countries. There are six (6) oil/gas leases within the WSA, four (4) of which are held by unit production. Two (2) leases expire on 2/1/87. There are two grazing allotments containing 200 AUMs (24 CYL) and 492 AUM's (41 CYL) respectively.

PARK

Joshua Tree National Monument. Two major life zones, the lower and upper Sonoran, are present within the monument. The upper Sonoran is characterized by woody plants, most notably the Joshua Tree. The more extensive lower Sonoran is composed of the Colorado Desert and the Mohave Desert. The monument lies in the transition zone of these two deserts. This transition zone provides unique niches creating increased biological diversity of both flora and fauna, including the elusive desert bighorn sheep and the cougar. 90% of the Pinto Basin is included in the NM. Archeological and historic remains can be found within Joshua Tree. The monument consists of over 550,000 acres of land.

USA

The USA consists of 4,480 acres of the 6,400 acre NLM study area. It contains the remaining 10% of the Pinto Basin not included in the monument. With the ecosystem of the Colorado Desert, the vast majority of the study area is upper alluvial fan slopes of the Pinto Basin with occasional small rock knob or hill complexities. The unusual plant assemblages of the Colorado Desert found in the monument also extend into the study area. While the alluvial fan character of the bulk of the USA is not prime habitat of the desert bighorn, the Eagle Mountain herd is likely transient through the area. Cultural and historic evidence is found in the area. The rugged and diverse terrain creates outstanding opportunities for solitude and recreation. Current and potential uses include no known valid mining claims but some signs of previous mineral activities are evident. No known water resources or grazing.

RECOMMENDATION/NOTES

NPS recommends that USA 114A be added to Joshua Tree NM. It has a common west and north boundary with the monument wilderness and contains the remainder of the Pinto Basin. Human impact is generally minimal; and the ruggedness and diversity of terrain, plus its contiguity with the monument's wilderness, create outstanding opportunities for a primitive and unconfined type of recreation.

PARK

Arches National Park

Consisting of over 73,000 acres, the NP contains the largest concentration of natural stone arches in the country. There are over 150 natural openings and over 50 that qualify by most definitions as arches. Examples of developing, complete, & collapsed arches are evident within the 114 square miles of the park. Along with the natural stone arches are many redrock canyons & fins. Against the arid, semidesert environment, these redrock canyons & fins make spectacular scenery for photographers. There is structural evidence of early settlers such as the Wolfe Ranch Historic District, which was added to the National Register in 1975. There are several areas of petroglyphs/pictographs within NP. All sites have been documented in the NP. The Courthouse Wash Rock Art Panel is listed on the National Register and represents the easternmost occurrence of the Barrier Canyon style. Because the culture that produced this art is not understood well, each locality where it occurs is an important treasure. Wildlife in the park consist of normally occurring fauna. Vegetation is aesthetically & scientifically important and include dense masses of vegetation known as "hanging gardens." While both flora and fauna are important, they do not make the park but rather enrich it.

USA

There is proposed to be added to the NP one USA known as LOST SPAIN CANYON USA. Consisting of 3,802 acres, it is located east and north of and adjacent to Devil's Garden Wilderness in the NP. Sharing a common border of over 2-1/2 miles and linked by a complex canyon system, the USA and NP have the potential of providing solitude & primitive recreation opportunities while protecting a significant natural resource. The USA canyon system flows into the Salt Wash which travels into the NP and empties into the Colorado River. The expansive system is visible from many vantage points throughout the NP and the USA. The USA is very similar in character to the NP with its steep canyon walls, fins, arches, and other amazing formations. The USA contains many caves, amphitheaters, alcoves, arches, and narrow tributaries. The quality of habitat for wildlife has benefited from its isolation and remote nature. However, due to its very nature, the ecology is such that the unit is not capable of supporting a great diversity of vegetation necessary to sustain large populations of wildlife. Wildlife consists of normally occurring animals and an occasional spotting of peregrine falcons. While there are no documented historic or prehistoric sites, there is a strong indication that at least one historic site and three prehistoric sites may exist. Recreation opportuni-

RECOMMENDATION/MIV

NPS recommends that the boundary of the USA be redefined to reflect a "system"-oriented boundary to simplify management and resource protection and that it be added to the park. Such a delineation is a natural extension of the resources currently within the NP and would allow for better resource protection, and would substantially suggest opportunities to expand recreation activities adjacent to the NP as well the interpretation of a new and unique resource (Fish Sheep Canyon) uncommon to Arches NP while minimizing the overall impact on the 418 AHP's.

ties include hiking, backpacking, horseback riding, and photography. There is a growing use of dirt bikes in the canyons and washes, which presents a major management concern since access to the canyons of the NP is gained through the USA. The noise and smoke caught in inversions jeopardizes the air quality, solitude, and wilderness aspects of the resource. Also the uncontrolled use of QMV's contribute to accelerated erosion and destroy vegetation and ground cover. There are 4 oil/gas leases and 1 application in USA and a total of 418 AUM's within the entire USA.

PARK

Guadalupe Mountains National Park Consisting of over 76,000 acres, the NP preserves a significant portion of the Guadalupe Ridge, an uplifted Permian limestone reef forming a huge V-shaped plateau characterized by a steep escarpment and deeply cut, spectacular canyons. The extensive exposures of the Permian reef are considered by geologists & paleontologists throughout the world as an outdoor laboratory of unique importance to trace the history of the earth and for understanding the origins of certain valuable mineral resources such as petroleum, potash, dolomite, & limestone. While the NP contains 21 caves, none are near the size of Carlsbad Caverns; however, several do contain decorations equal to those of Carlsbad. Botanically, the NP includes a unique assemblage of flora representing three distinct regions: Chihuahuan Desert, Rocky Mountain coniferous forest, & the eastern hardwood woodland. Three species have been listed "threatened & endangered." Biologically, the NP represents a transition zone with distinct species of wildlife. There may be potential of reintroducing native Bighorn Sheep, & the NP supports approximately 100 Rocky Mountain elk, which were reintroduced. Other wildlife include black bear, mountain lion, & coyote. Culturally

USA

There is proposed to be added a USA known as Lonesome Ridge. Consisting of 3,426 acres, it is at the mouth of Big Canyon, a major drainage that cuts through the Guadalupe Escarpment. The topography of the USA is that of spectacular, sheer limestone cliffs plunging into deep canyons, and rivals the outstanding beauty of the McKitterick Canyon drainage of the NP. The vegetation is representative of the transition zone of the Chihuahuan desert biotic community & hardwood communities of higher elevations. While the wildlife is not unusual, the rock ledges & many caves provide excellent nesting & denning sites for many species. Barbary sheep, an exotic ungulate, inhabit the steep slopes. NPS has considered the USA as a potential site for reintroducing the Bighorn Sheep. Black bear population has seemed to maintain itself throughout increasing development pressures. The USA is a known nesting site for peregrine falcons. Several wildlife species on the NM endangered list are common in the USA. There are 8 known caves in the USA & a high probability that more will be found. While the USA has not been inventoried for cultural resources, it is not uncommon for hikers to find stone tools and lithic scatters. It is logical to assume that the same type of arche-

RECOMMENDATION/MIV

NPS recommends that although the USA has been recommended for inclusion in Guadalupe Mountains NP, it should more appropriately be added to Carlsbad Caverns NP because: (1) both NP & USA are in the same State & county, fostering law enforcement & jurisdiction coordination; (2) access is best from Carlsbad Caverns NP; and (3) cave resource specialists required to assist in the management of the significant caves are stationed at Carlsbad Caverns NP.

known inhabitants of the region. ⁵ Subsequent cultural sequences have been documented. Recreation opportunities are primitive due to its relatively remote and undeveloped nature.

the WP would be found in the USA. Primitive & unmentioned recreational opportunities include hunting, hiking, backpacking, horseback riding, wildlife observation, and caving. The acreal value stands out par with its scientific value, with the Guadalupe Mountain range already having been established as the single most important scenic attraction in the entire west TX and southeast NM regions. It should be noted that scientists have expressed interest in nominating the Capitan Reef complex as a World Heritage Site. There are no locatable minerals in the USA; however deposits of calciche have been located but their marketability remains the same as outlined for MURKETS USA. The entire USA has been leased for oil/gas, but no exploration activities have taken place within the unit. USA has been rated by Atlantic Richfield as "low favorability". The leased total seven (7). The USA is within one BLM-administered allotment that consists of 11,212 acres of BLM land, 486 acres of NM State land, and 2,027 acres of private land. This equals 66,3 AUMs (72 CYL) over the total allotment, and only 20% of the USA is actually grazed because of the topography and lack of water.

Bureau of Land Management Acquisitions, 1986 - 1988

State	1986		1987		1988	
	#	Acres	#	Acres	#	Acres
Alaska	-	-	-	-	1	6.1
Arizona	-	-	1	20.0	-	-
California	18	199.9	17	918.5	8	254.1
Colorado	1	1.5	1	40.0	-	-
Idaho	-	-	-	-	-	-
Montana	3	921.7	1	5.6	1	9.1
Nevada	-	-	-	-	-	-
New Mexico	-	-	1	40.0	5	1,634.0
Oregon	2	2,064.0	5	5,933.5	4	1,002.9
Utah	-	-	-	-	-	-
Wyoming	-	-	-	-	-	-
ESO	-	-	-	-	-	-
	24	3,187.1	26	6,957.6	19	2,906.2

Total expenditures for acquisitions during this three-year period was \$6,223,540, primarily from the Land and Water Conservation Fund.

Bureau of Land Management Exchanges, 1986 - 1988

All States	1986		1987		1988	
	#	Net Acres	#	Net Acres	#	Net Acres
State	10	+ 25,188	20	+184,382	10	+ 33,547
Private	45	+ 21,440	48	+ 90,533	57	+111,204
Total	55	+ 46,628	68	+274,915	67	+144,751

Note: One condemnation is currently in progress (King's Range, California, 80.1 acres).

Source: Bureau of Land Management, Division of Lands

Mr. CASON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Cason.

We have a little bit of time left here so we can begin some of the public witnesses. I'm concerned if we get into votes this afternoon we may have difficulty. I wonder if Mr. Peterson, Max Peterson from the International Association of Fish and Wildlife Agencies, could come forward.

I might say Mr. Peterson is no stranger to this committee room. Some years he has probably spent more time in here than I have. It is good to have you back. You may notice it's changed a little bit since last time. We've at least gotten a paint job in the place. This long table doesn't change. When I was a new member, Max, I recall back in the days when I was first on this committee. I sort of sat down there and used binoculars to see what was going on. You'll recall the days with Hubert Humphrey sitting over here, and he and Bob Dole and Henry Bellmon, and a couple others, would be sending quips back and forth. I recall in the days when Earl Butz would come to testify, and he and Senator Humphrey would get into a colloquy back and forth, and you'd almost be able to sell tickets to come in and listen to it. The press would have enough to write about for at least the week after that.

Just to note for the record, you're the former Chief of the Forest Service during the Reagan administration. You're currently the executive director of the International Association of Fish and Wildlife Agencies. With that introduction, it's over to you.

STATEMENT OF R. MAX PETERSON, EXECUTIVE VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES, WASHINGTON, DC

Mr. PETERSON. Thank you, Mr. Chairman. This room is quite familiar to me. I remember sitting over there and having Hubert Humphrey move his chair back quickly and say, "What does that mean?" as he was trying to interpret something when we were considering the National Forest Management Act. So, I have lots of pleasant memories of this room. This table has gotten longer, I believe.

The CHAIRMAN. They keep adding people on this committee. When I first came here, you had to actually arm-wrestle people to get on the committee. Now we have more people applying than we have seats. That is both good and bad, but I might say that Senator Humphrey asking you for advice, I know an awful lot of people around this table, both Republicans and Democrats, who have asked you for advice and we are glad to get it.

Mr. PETERSON. I remember also talking to Senator Helms right after the crash of the Korean airplane and his being in the airport in Anchorage with a family who was later killed, so I have a lot of memories of talking with members of this committee.

INTRODUCTION

Mr. Chairman, you have my entire statement and maybe, in order to save you time, I will not read the whole thing. You have already recognized that I am now the executive vice president of the International Association of Fish and Wildlife Agencies.

The International Association is both nonpartisan and nonpolitical. We look at resource questions and people that are responsible for resource questions on a basis of what looks best for the long term for the resources involved.

NOMINEE CONSIDERATIONS

Mr. Chairman, I would also say that it is not with any particular feeling of happiness that I come before this committee. I remember saying it is a pleasure to be here or I am happy to be here. That is really not the case in this situation. We spent a long time weighing this particular nominee and deciding what the International should do or not do, and we continued to weigh the situation up until after the testimony last week, so this was not a position arrived at quickly or easily by the International.

Let me just point out that, in looking at Mr. Cason, we first look at his qualifications. We always do that when any kind of nominee is presented by the administration. As you know, Mr. Cason was Special Assistant to the Director of the Bureau of Land Management from 1982 to 1985, and then a Deputy Assistant Secretary from 1985 to 1989.

Shortly after the press carried reports that he was probably going to be nominated, I met with Mr. Cason, at his request, I was particularly concerned because he said his record was being distorted and that people were off on a tangent, sort of chasing rabbits and that he was not really being given an opportunity to talk about his record.

We spent, I think, between an hour and a half and 2 hours reviewing his record in some detail and listening to the points that he wanted to make about that record.

One of the statements he made, which he has made before this committee, is that most decisions he did not make himself, he was carrying out instructions of others. I asked him did he disagree with those instructions, and he said you do not do that within a political framework.

I RECOMMENDED TO HIM PERSONALLY THAT HE WITHDRAW FROM THE NOMINATION

But at the end of that long discussion, I recommended to him personally that he withdraw from the nomination. I told him I just simply did not feel that he could disassociate himself from his record, because that is the only record he has, and to project some different future than is reflected by that record is difficult.

LET ME MAKE TWO DISCLAIMERS THAT ARE IN MY STATEMENT

Let me make two disclaimers that are in my statement, but I want to make publicly. First, I have not asked for nor received any information on Mr. Cason from current personnel of the Department of the Interior or the Department of Agriculture, including the Forest Service. I have not discussed his performance at Interior with any current personnel of either Department.

In fact, Mr. Chairman, I think you know, as a professional head of an agency, I would consider it both inappropriate and unprofessional in a case like this for the competitive service people to take

a position on an appointment. I do not think that is their business. And so I made it a point to say to them that I simply will not discuss this appointment with them, and I might say, I have not had them call me and say they wanted to discuss it with me.

The CHAIRMAN. Nor have you and I had any discussion before just now.

Mr. PETERSON. That is correct.

LET ME FIRST DETAIL JUST A FEW OF THE REASONS WHY WE CONSIDER
MR. CASON TO BE AN INAPPROPRIATE CHOICE

But let me first detail just a few of the reasons why we consider Mr. Cason to be an inappropriate choice for Assistant Secretary of Agriculture for Natural Resources and Environment. And let me just insert that, in looking at Mr. Cason's background, since I also grew up in a very poor agricultural family, that made it doubly difficult to try to deal with the question of a nominee who we consider inappropriate.

Mr. Cason has neither education nor professional experience in natural resources management. I think you mentioned that, Mr. Chairman, on several occasions. After graduating from college and working in real estate and sales and politics, at the age of 28 he became a Special Assistant to the Director of the Bureau of Land Management.

It is really unclear to me what qualifications, except political experience in Oregon, that he brought to that job, and as a Special Assistant, there really is no record of any substantial accomplishment, one way or the other, because of the nature of that job.

In 1985, he became Deputy Assistant Secretary for the Office of Land and Minerals Management. In that position, Mr. Chairman, I would submit that he became involved in a number of very controversial decisions which, unfortunately, paint a rather consistent picture of him.

I would suggest that those decisions were marked by one ingredient—they were uniformly bad, when measured against any reasonable standard of public interest and fairness to the public, which owns the public land.

On several occasions, during the time I was Chief of the Forest Service, I said those are not Forest Service lands, those are not BLM lands, those are the public's lands which are owned by every living human being in this country, plus people yet unborn, and we have a major stewardship responsibility for those lands and the decisions we make must reflect that stewardship responsibility.

When questioned about the decisions, he tends to minimize his involvement or insists that he is merely carrying out orders. In either case, I would say that is the only record we have to judge his future performance.

You are now asked to confirm him to be Assistant Secretary of Agriculture for Natural Resources and Environment. That position has enormous responsibility. It seems almost inconceivable to me in the International Association of Fish and Wildlife Agencies that, with many well-qualified people available for such an important position, and with the President's personal commitment to wise use

of natural resources, that a person with the very poor qualifications of Mr. Cason would be the nominee of this administration.

SPOTTED OWL ISSUE

Mr. Chairman, I have detailed in my statement a whole lot of things in his record. Most have already been brought before this committee, so I do not know that I need to rerun them, except to say that if you look at the spotted owl issue—and let me confirm that people of good-will can come out on different sides of that issue—

The CHAIRMAN. I understand.

Mr. PETERSON [continuing]. It is controversial, it is difficult, and so on—so I do not fault the decisions as much as I do the way the decisions were arrived at.

He appointed a committee, he reviewed an outline of what they were going to do, they came in with a report and discussed it with him, he simply did not like their conclusions, so he suppressed it.

Now, in testifying before this committee, he wavered all over, but he finally admitted that the report was, in fact, suppressed. He apparently also had some fairly strong words to say about the committee, according to that testimony, but I was not there so I do not know that for sure.

At any rate, he suppressed it, he did not follow it, and what I think is equally important, he then apparently was a part of sanitizing the report. When the press later reported the original report, then a sanitized report was issued. Now, that is simply, in my view, inappropriate, inexcusable, and dangerous behavior of a public official.

I also discussed the question of listing the owl. According to the sworn statements by former Fish and Wildlife Service Director Dunkle and Regional Director Wallenstrom, Mr. Cason was insistent that the owl not be listed, even though such decisions are the responsibility of the Fish and Wildlife Service and, by law, must be based only on biological information.

OIL SHALE CASE

The oil shale case, you just covered here. Again, this was difficult, but these claims have been around since before 1920, the 1920 act was meant to not have such claims any more. The claims sat around for years and years and years, and they were finally resurrected.

The House passed legislation to cutoff that avenue. The Senate adjourned without acting. And what we find is an almost inconceivable situation. Mr. Cason went to Colorado and encouraged other claimants to file for patents, on the stated basis that that would help Congress act. He well knew, from having approved the conveyance of 17,000 acres in 1986 for \$42,500—and they were resold a few weeks later for \$37 million—that a lot of land and a lot of value was involved.

Now, whether the Government should have appealed the District Court decision or whether they should have settled is not the issue here. Their regional attorney, according to the record, thought they should appeal, thought the District Judge's decision was flatly

wrong. Others thought they should settle. But even if you follow the settlement route, you do not give the land away for \$2.50 an acre administrative cost. The settlement was based on just transferring the land at \$2.50 an acre, although reserving a couple of things. But when you talk about land that is worth that much money, if you settle, you would settle somewhere between those amounts, looking at the exposure of the Government and the cost of litigation and a whole lot of things.

Again, I guess I would agree with one of your summary statements earlier today, Mr. Chairman, that here is a case again of weighing private interests and public interests. He apparently had little trouble siding with the private interests there. I think that was a very difficult question, particularly since it was under consideration by the Congress, the House had passed legislation. So, I think his action was an inexcusable betrayal of the public trust.

THE BASE FOR COMPUTING COAL ROYALTIES WAS CHANGED

Again, the base for computing coal royalties was changed. This is another multimillion-dollar regulatory proposal signed by Mr. Cason which was clearly to the disadvantage of the States and the Federal Treasury. The States lost 50 percent of that reduction in royalty.

OIL AND GAS REGS

Then I finally detailed the intervention in the proposed Forest Service-USDA oil and gas regs, and I think you are well aware of that. Again, I find that a case where he very clearly intervened in a case in another Department which was inappropriate. I also mention the Roseburg Forest Products case, a similar kind of a situation.

Mr. Chairman, I will summarize in 30 seconds. I realize that I am over my time.

I think that his qualifications, his experience and his record indicates he falls far short of what would reasonably be expected for someone aspiring to the important position of Assistant Secretary for Natural Resources and Environment. In fact, in our judgment, he is clearly not qualified.

It could be argued that this lack of education and experience could be overcome, if Mr. Cason skillfully used the abundant professional resources of SCS, the Forest Service, and so on.

I might say if that had shown up as a pattern in Interior, that he had skillfully used the professional help available, then you could say he can overcome his lack of experience and qualifications, but the record indicates quite clearly that he does not use the professional people of Interior, particularly when they do not agree with him. He feels quite free to substitute his own judgment and to suppress that judgment from the public. So, I would say that we have to conclude that his record is consistently bad.

Mr. Chairman, let me conclude my testimony by saying that the Association very reluctantly decided to oppose this nomination. We talked about it over the last 6 months and finally decided that at some point you have to take a stand. Although we would much

rather be here in full support of the President's nominee, in all good conscience, though, we must oppose it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Peterson.

I had a number of questions in anticipation of your testimony, but you have answered every one of them in your statement. I know this is a rather extraordinary situation, and I am sure you would rather be here, as you said, on other matters than this, but I appreciate your testimony and I believe you have done a service to the committee.

Max, it is good to see you again.

[The prepared statement of Mr. Peterson follows:]



International Association of Fish and Wildlife Agencies

Hall of the States

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R. Max Peterson, Executive Vice President

STATEMENT OF R. MAX PETERSON, EXECUTIVE VICE PRESIDENT,
INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES,
ON THE NOMINATION OF JAMES E. CASON AS ASSISTANT SECRETARY
OF AGRICULTURE FOR NATURAL RESOURCES AND ENVIRONMENT
BEFORE THE SENATE COMMITTEE ON AGRICULTURE, NUTRITION
AND FORESTRY
October 4, 1989

Introduction

Mr. Chairman and members of the Committee: As most of you know, I have had the privilege of appearing numerous times before this Committee in my previous role as Chief of the Forest Service. Today I am here as the Executive Vice President of the International Association of Fish and Wildlife Agencies. The International Association was founded in 1902 and, since that time, has been concerned with the protection and management of North America's fish and wildlife resources. The Association has members from all 50 states, the provinces of Canada and Mexico. The Association has been a key organization in the promotion of the principles of sound resource management and the strengthening of federal, state and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

The International Association is non-partisan and non-political. It is a middle-of-the-road, conservation-minded organization that believes in the wise utilization of our renewable natural resources.

Before my retirement two and one-half years ago, I had the privilege of appearing before this Committee numerous times to discuss matters of mutual concern. The matter that is before you now, the question of confirmation of James E. Cason to be Assistant Secretary of Agriculture, is one of great importance and concern. It is of direct concern to the International Association because the Assistant Secretary for Natural Resources and the Environment will have purview over agencies that cooperate closely with the states and whose activities directly affect fish and wildlife resources on both public and private lands. We have confidence that this Committee will weigh the facts carefully and will arrive at a reasonable decision. We would like to contribute to that effort.

Statement of Opposition

Mr. Chairman, today I appear to state the strong opposition of the International Association to the nomination of James E. Cason to be Assistant Secretary of Agriculture for Natural Resources and Environment.

We did not arrive at that position quickly or easily. After the initial press accounts of his pending nomination, we spent a considerable amount of time reviewing, in some detail, the record of Mr. Cason as Special Assistant to the Director of the Bureau of Land Management from 1982 to 1985, and then as Deputy Assistant Secretary for Lands and Minerals from 1985 to 1989. In addition, I met with Mr. Cason at his request to listen to his account of his record and his claim that it was being distorted by a few people off on a tangent. At the end of that discussion, I told him I did not think he could disassociate himself from his record and recommended that he withdraw from the nomination. The additional information on his record that I have seen since that time clearly indicates that both he and the Administration would have been much better off had he withdrawn. There is such broad and deep opposition to his appointment, it will be very difficult for him to perform even if confirmed.

At this point, Mr. Chairman, permit me to make two disclaimers. First, I have not asked for nor received any information on Mr. Cason from current personnel of the Department of Interior or the Department of Agriculture, including the Forest Service. Second, I have not discussed his performance at Interior with any current personnel of either Department. In fact, I would consider it inappropriate and unprofessional, in such cases as this, for such information to be provided to me.

Lack of Qualifications

Let me now, Mr. Chairman, detail just a few of the reasons why we consider Mr. Cason to be an inappropriate choice for Assistant Secretary of Agriculture for Natural Resources and Environment.

In consideration of any person for a position, it is usual to start with qualifications. Mr. Cason has neither education nor professional experience in natural resources management. After graduation from college and working in real estate, sales and politics, at the age of 28, he became a Special Assistant to the Director of the Bureau of Land Management. It is unclear as to what qualifications, except political experience in Oregon, that he brought to that job. As a special assistant, there really is no record of any substantial accomplishment by Mr. Cason.

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In 1985 he became Deputy Assistant Secretary for Lands and Minerals. In that position he was involved in a number of very controversial decisions which paint a rather consistent picture of him. I would suggest that those decisions were marked by one common ingredient. They were uniformly bad when measured against any reasonable standard of public interest and fairness to the public which owns the public lands. When questioned about those decisions, he tends to minimize his own involvement or to insist that he was merely carrying out orders of others. In either case, that is the only record anyone has as a basis for judging his probable future performance.

You are now being asked to confirm him to be Assistant Secretary of Agriculture for Natural Resources and Environment. This Committee is well aware of the importance of that position. It seems almost inconceivable that with many well-qualified people available for such an important position, that a person with the very poor qualifications of Mr. Cason would be the nominee of this Administration.

In summary, then, I believe if an objective panel looked at an application with Mr. Cason's qualifications, they would stamp it unqualified.

His Record

Now, let us examine briefly the record that is available to us. As I stated earlier, his record is not entirely clear because as a Special Assistant from 1982 to 1985 at BLM, he did a variety of things with no real responsibility for substantive programs. I have very little information on that period except that which I obtained secondhand from people who worked with him who have now retired from the Department of the Interior. Mr. Chairman, since I do not believe in presenting hearsay at a hearing like this, suffice it to say that his general reputation among professionals who are now retired was not good. He appeared to have little respect for those with long experience and education within the Department and frequently was in rather substantial conflict with them. One senior retiree who had worked with him at Interior told me they were very grateful that he was leaving Interior! I would consider that period of not much help in determining his capability to serve as Assistant Secretary for Natural Resources and Environment. I would not count that period for or against him.

We are then left with trying to evaluate the period between 1985 and early 1989, when he served as Deputy Assistant Secretary of Interior for Lands and Minerals. That period is somewhat clouded by the fact that he was a Deputy Assistant Secretary and therefore did not apparently make many major decisions on his own, but it is instructive to look at the

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management processes and the relationship between him and the people who worked for and with him. The ultimate effectiveness of a person in that kind of a job depends on his ability to utilize the wealth of professional and technical talent that is available to him in the agencies and relate that to the policy direction of the Administration. If he cannot successfully do that, then it will be a frustrating and unworkable experience.

Let us take a few examples to determine his modus operandi in that important position.

The Suppressed Spotted Owl Report

The first example that came to our attention was the infamous spotted owl professional team report. I am sure you have heard more about that case than you want to know. Let me first confirm the obvious fact that the spotted owl decision is highly important, it is controversial and people of good will can come out on different sides of the question. I think that fact, though, tends to obscure the more basic question of how did he utilize the professional talent that was available to him to make a complicated, controversial decision. He did help appoint a professional team from BLM to carefully examine the spotted owl question and to prepare a professional report for consideration by higher level management. That is a very appropriate type of action. The team prepared a report which he reviewed both in outline form and as a draft report. The remarkable thing, though, is that when he received the report and it did not agree with his own judgement, he did several things that are exceptional and dangerous for a public official. 1) He effectively suppressed the report; 2) he took no action as a result of the report even though the report stressed the need for action; and 3) a sanitized report was later issued after the existence of the original report was reported in the press.

Let me briefly address the suppression of the team's report. His statements about the report are at odds with others who were present when the team's report was presented. After much questioning by this Committee, he did admit that the team, in fact, interpreted his intentions, if not his direct orders, to mean that the report was to be impounded and that it was not to see the light of day. Whether he made other intemperate remarks to the team or whether he insisted that under no circumstances would the owl be listed is a matter of some debate.

I would submit that the professional report was, in fact, suppressed. Work was not begun again until after press reports appeared about it. He admitted to this Committee that whether anything more would have been done without the press reports,

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he does not know. Equally important, he refused to take action based on the report. The third characteristic of that incident is the fact that he attempted to keep it from the public and a sanitized version was issued after the original report became public knowledge.

According to sworn statements^{1/} by former Fish and Wildlife Service Director Dunkle and Regional Director Wallenstrom, Mr. Cason was insistent that the owl not be listed even though such decisions are the responsibility of the Fish and Wildlife Service and, by law, based on biological information.

I believe the most important thing we can learn from that case is his inappropriate response to professional reports and recommendations with which he may not personally agree. The nominee's action in this important case does not square with his promise to this Committee to aggressively move to protect threatened or endangered species.

Oil Shale Sales

Let us next turn to the transfer, or giveaway, of public oil shale lands. I have looked at that case very closely and listened to his testimony before this Committee with much interest. Again, much of his answer is evasive and obscures the record. What is not in dispute is the fact that, in 1988, he did encourage mining claimants to file for patents to those claims which they received for a \$2.50 per acre administrative cost. Evidence already presented to this Committee shows that in 1986 17,000 acres of public land were conveyed to private interests for \$42,500 and resold a few weeks later for \$37 million. In discussing the case before this Committee, he indicated that the District Court judge had suggested that the Department settle the case rather than to appeal the decision and continue litigation. Apparently Interior's regional counsel believed that the case should be appealed and others thought the case should be settled. Even if you follow the path that the case should be settled rather than further litigated, common sense and normal procedure would direct that settlement be related to the value of the land in the claims. It would have been appropriate, for example, to have appraisals made of the land and then enter into settlement negotiation with a view to settle if such action appeared to be in the public interest, considering the cost of litigation and the probability of winning or losing the case. There is no record

^{1/}Report of House Committee on Merchant Marine and Fisheries, June 1989.

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of such action. In fact, for reasons that are not clear, Mr. Cason suggested that others file to demonstrate interest in the claims to Congress. In discussing this with him, I pointed out that if he felt that the law was contrary to the public interest, he had a responsibility as a public servant to strongly advocate a change in the law. Before this Committee, he indicated his great concern for the private rights in this case and not the public interest, which is his sworn duty to uphold.

Changing the Base for Computing Coal Royalties

Another multimillion dollar regulatory proposal signed by Mr. Cason which was to the disadvantage of the states and the federal treasury was the reinterpretation of the base for computing coal royalties. Here again there were years of prior practice in making those determinations. The change was made without any real public involvement or consultation with the states who lose half of the revenue involved. Although he ascribes the major initiative here to Assistant Secretary Steve Griles, he, in fact, carried out those efforts after Steve Griles had left the government. If he did not agree that the changes were in the public interest, he certainly could have reversed direction.

Intervention in Proposed USDA, Forest Service Oil and Gas Regulations

Another case you questioned Mr. Cason about last week related to his intervention at the OMB level on the proposed USDA Forest Service rules on oil and gas leasing on National Forest land. There are several unusual things about his actions in this case. First, these were proposed rules which would go out for public comment and for review by other agencies before final decisions several months away. It is very unusual for a Deputy Assistant Secretary of another Department to sign a letter to OMB asking for specific reversal of another agency's proposed rules. The letter of transmittal suggests if there are questions, they should be directed to him. There are two primary points of concern in his intervention. The position that he took on the proposed regulations^{2/} were contrary to the need to assure adequate protection of other values. When questioned about that before this Committee, he said his primary objection was that the provision was there without any provision for reimbursing the

^{2/}Letter dated December 1988 to Ms. Pam Barr, OMB, signed by James E. Cason.

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lessee for his cost. That concern apparently outweighed his concern for adequate environmental protection and, of course, if payment was his primary concern, he could have suggested adding a payment clause rather than deleting the protection clause.

An equally troubling comment on the proposed rule was a statement that the Forest Service should not use forest plans as a basis for denial of oil and gas leases. That is a rather remarkable statement to make since law and official guidance of both the Department of the Interior and the Department of Agriculture is that land use plans should be the primary basis for making leasing decisions. In fact, that is emphatically stated in BLM's Supplemental Program Guidance on oil and gas leasing issued in 1986 and adopted by the Forest Service in 1988. Literally speaking, his statement means that the Forest Service should violate the plans prepared as required by the National Forest Management Act of 1976. The suggestion goes on to say that the Forest Service should be directed to revise the plans to provide for leasing wherever it is legally possible.

That memorandum was signed December 20, 1988, after Assistant Secretary Griles left, and was personally signed by Cason. It is difficult to understand how he can pass the buck on that one to someone else. The final rules have not been published and, if confirmed, would come to Mr. Cason in USDA for decision.

Roseburg Forest Products

A final case that I want to mention involves Roseburg Forest Products Company in Oregon. That company, like many others in the West, had bought high-priced federal timber from the Bureau of Land Management and the Forest Service in the late 1970's and early 1980's. When the economy changed dramatically in the early 1980's, the company had a large volume of timber under contract at prices substantially higher than the current market price. Many companies, to their credit, went ahead and honored their contracts though they lost money in the process. Roseburg, along with many other companies, took advantage of the maximum buyout provisions allowed by the Federal Contract Payment Modification Act of 1984 by turning in 55% of the sales under contract up to a maximum of 200 million board feet. Payment was determined by a complicated formula in the law. That was a multimillion dollar benefit to the company. Not being satisfied with the benefits allowable under the Act, Roseburg Forest Products Company's President and then-Deputy Assistant Secretary Cason entered into negotiation to provide the company with additional benefits for the 45% of the timber remaining under contract.

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The fact that Cason was personally involved in the negotiations for several months and that, in 1987, he transmitted two proposals to the Department of Justice is a matter of record^{3/}. The proposals would have allowed the company to harvest timber paying only current market prices rather than the amount required by the contract. The difference could be covered by a note of indebtedness with a balloon payment at the end of the contract, apparently without interest, and with a provision to allow payment of the balance over 10 years at 7 percent interest, which was considerably below market rates. Although apparently negotiated to apply to BLM contracts, the President of Roseburg stated in his letter to Cason that "once the concept is accepted" it can be tailored by knowledgeable people to fit Forest Service contracts. Fortunately, that ill-conceived proposal was not approved and Roseburg has continued to harvest timber paying the contract amount as required by law.

A particularly disturbing factor in this case is that a Deputy Assistant Secretary was personally involved in such negotiations with the President of a company rather than the technical, legal and contract people who are experts in that field. I do not believe that there is any legal authority to approve such a proposal in the absence of new legislation.

Summary

Mr. Chairman, in summary, our review of Mr. Cason's qualifications and experience indicate they fall far short of that which reasonably could be expected of someone aspiring to the important position of Assistant Secretary of Agriculture for Natural Resources and Environment. In fact, in my judgement, he is clearly not qualified. It could be argued that this lack of education and experience could be overcome if Mr. Cason skillfully used the abundant professional resources of the Soil Conservation Service, the Forest Service and other agencies of the Department. Unfortunately, the record is quite clear that Mr. Cason consistently has not used the professional people of the Department of Interior. In fact, the record shows that if he does not like the professional judgements given to him, he not only does not follow the recommendations; he, in fact, at least on some occasions, has tried to suppress them. Finally, even though his record is quite short and he describes most of his action as simply following instructions, it is the only record he has. It is consistently bad. When he was apparently mostly on his own after the elections and after

^{3/}Letter dated September 25, 1987 to Mr. John Showalter, Department of Justice, signed by James E. Cason.

the departure of Assistant Secretary Griles, he made a series of decisions that are highly questionable that demonstrate a lack of concern for the stewardship responsibilities of his position and are questionable enough that the incoming Administration has decided to either reverse or put those decisions on hold. That is a rather remarkable record to lay before this Committee. When asked by this Committee for his positive record of accomplishments, he mentions support for a few wilderness proposals which, in fact, came before him as recommendations of the Bureau of Land Management, and some offshore oil decisions which were obviously made by Secretary Hodel after significant pressure from many groups including the Congressional delegation.

Mr. Chairman, let me emphasize again that the International Association very reluctantly decided to oppose this nomination. We would much rather be here in full support of the President's nominee for this important position. In all good conscience, though, we must oppose this nominee.

Mr. Chairman, I would be happy to answer questions that you might have.

The CHAIRMAN. While normally we would have recessed at this time, I want to try to get some of the balance here. I see Ms. McDonald here, from the Public Lands Council, and I was going to call on her to testify next.

Ms. McDonald, thank you for being here.

I would tell the other witnesses, just so everybody can plan their schedule, that Ms. McDonald will be the last witness this morning, and then we will go back to the public witnesses this afternoon.

Ms. McDonald, it is good to have you here.

**STATEMENT OF PATTY McDONALD, EXECUTIVE DIRECTOR,
PUBLIC LANDS COUNCIL, WASHINGTON, DC**

Ms. McDONALD. It is nice to be here, thank you, Senator.

My name is Patty McDonald. I am executive director of the Public Lands Council, which represents the 27,000 cattle and sheep producers who graze livestock on Federal lands, including national forests, in the 14 Western States.

The CHAIRMAN. If I could interrupt, is that why the National Cattlemen's Association and you have the same telephone number? I was curious about that.

Ms. McDONALD. Well, the PLC is a sister organization of the National Cattlemen's Association, the American Sheep Industry Association and the Association of National Grasslands.

The CHAIRMAN. But is the Public Lands Council part of the National Cattlemen's Association?

Ms. McDONALD. No, it is separate. It is a sister organization, but we house at the National Cattlemen's Association.

The CHAIRMAN. I thought it was a mistake. I was looking down at the telephone number and I noticed it was the same, and that is why.

Ms. McDONALD. Actually, it is not the same. I think your information might be wrong. PLC's phone number is 347-5355.

The CHAIRMAN. OK.

Ms. McDONALD. NCA's phone number is 347-0228.

The CHAIRMAN. Just housed together, then?

Ms. McDONALD. We are housed together.

**THE PUBLIC LANDS COUNCIL (PLC) STRONGLY SUPPORTS JIM CASON FOR
THE POSITION OF ASSISTANT SECRETARY OF AGRICULTURE FOR NA-
TIONAL RESOURCES AND ENVIRONMENT**

The Public Lands Council (PLC) strongly supports Jim Cason for the position of Assistant Secretary of Agriculture for National Resources and Environment. In addition, we are part of a larger group of public land user and agricultural associations supporting Mr. Cason's nomination. Those groups, which range from cattle to corn to cotton producers, from recreation to water to private property owner interests, have written to the Chairman and members of this committee with their reasons for supporting Mr. Cason.

**MR. CASON IS VERY WELL-QUALIFIED FOR THIS IMPORTANT POST FOR A
NUMBER OF REASONS**

PLC believes Mr. Cason is very well-qualified for this important post for a number of reasons. First, he is an experienced Federal

manager. As the principal Deputy Assistant Secretary for Land and Minerals Management at the Department of the Interior since 1985, he helped oversee three agencies and a staff of 12,000 people in 300 offices nationwide, with a variety of wide-ranging management responsibilities.

Second, Jim Cason understands the multiple-use mission of the U.S. Forest Service, which he would oversee. Like the Bureau of Land Management, the U.S. Forest Service is charged under a number of laws to manage our vast national forests for a wide variety of multiple uses, including livestock grazing, timber, water, wilderness, energy, wildlife, and recreation. Jim Cason understands the need to balance all of these uses, with public input and working with *all* of the interest groups, so as to both responsibly use our national resources and protect and conserve our environment.

Finally, Jim Cason understands agriculture. His parents were migrant farmers, and from early childhood, Jim's life centered around agriculture and farming. His family traveled every year up through the fields of California, Oregon, and Washington, picking vegetables and harvesting crops, with off-seasons spent as tenant farmers in Missouri. He has seen firsthand the commitment that farmers and ranchers have for the long-term conservation of the land, soil, and water on which their livelihoods depend. This experience and understanding will prove invaluable as he oversees many of the Nation's farm programs in SCS.

ON A MORE PERSONAL NOTE

On a more personal note, I have worked with Jim Cason since 1982, during virtually his entire tenure at the Department of the Interior. I know him to be a very intelligent, honest, forthright, fair and good person, who cares about our Nation's environment and economy and who views his stewardship responsibilities seriously. Jim Cason I believe is a man of his word. When he says his door will be open to all interest groups, it will be. When he says he will faithfully carry out the law of the land and implement the President's agenda, he will. I have every confidence that he will work closely with this committee and the Congress to do the best possible job in executing his responsibilities in his new position.

SUMMARY

In summary, it is the recommendation of the Nation's public lands livestock industry that this committee and the Senate expeditiously confirm Jim Cason as President Bush's and Secretary Yeutter's nominee for Assistant Secretary of Agriculture for Natural Resources and Environment.

Thank you.

The CHAIRMAN. Thank you, Ms. McDonald.

As I did with Mr. Peterson, I will waive the questions I had considered asking you. You have really anticipated and answered them in your statement.

Thank you for being here.

Ms. McDONALD. Thank you.

The CHAIRMAN. With that, we will stand in recess until this afternoon.

[Whereupon, at 11:30 a.m., the committee was in recess, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. I apologize for being late.

We will go in this order, Mr. Hair, Dr. Cutler, Mr. Harrison, Mr. Rey and Mr. Frampton. Mr. Hair is here and it is unusual for the National Wildlife Federation to be involved in testifying in this fashion, so I will be interested in hearing your testimony. Feel free to go ahead.

STATEMENT OF JAY D. HAIR, PRESIDENT, NATIONAL WILDLIFE FEDERATION, WASHINGTON, DC

Mr. HAIR. Thank you very much, Senator Leahy.

INTRODUCTION

I am Jay Hair, the president of the National Wildlife Federation, and I have been asked today to also deliver testimony on behalf of the Sierra Club and the National Audubon Society. Our three organizations are the largest membership environmental organizations in the Nation, with collectively over 7 million members.

As you are aware, and as this committee is aware, the Assistant Secretary for National Resources and Environment is the Department of Agriculture's highest ranking environmental officer, overseeing the activities of the Forest Service and a number of important rural conservation programs.

We believe that Mr. Cason's record at the Department of Interior is vitally relevant to the committee's consideration of his suitability for the position of Assistant Secretary, since in his capacity as Deputy Assistant Secretary and Acting Assistant Secretary for Land and Minerals he exercised management and policy development responsibilities affecting literally hundreds of millions of acres of public land.

DECISION TO NOMINATE MR. CASON TO THIS POST ASTOUNDED THE NATIONAL WILDLIFE FEDERATION

The administration's decision to nominate Mr. Cason to this post astounded the National Wildlife Federation. Since Mr. Cason's record at the Department of the Interior was consistently antagonistic toward environmental concerns and subservient to the demands of commodity interests, in a manner all too similar to that of the attitudes of former Secretary Watt.

Moreover, we believe that a review of a number of key issues that I have outlined in detail in my full testimony, Mr. Chairman, that I would asked to be submitted to the record, indicate Mr. Cason's lack of appreciation for stewardship responsibilities entrusted to the officials who preside over public lands and our Nation's natural resources.

Although Mr. Cason believes that his critics, the National Wildlife Federation included, have objected to his nomination on the basis of only a small number of inconsequential actions, in fact the issues described in our testimony and that of others examined by the committee are issues of major importance to the management

and future disposition of tens of millions of acres of public and private land.

Furthermore, the fact that many of those actions have been repudiated by the current administration confirms our view that Mr. Cason's behavior at Interior is not only evidence of poor judgment, mismanagement, and insensitivity to the environment, but also indicate that Mr. Cason's attitudes are out of step with those of the current administration on important environmental issues.

CONCLUSION

Let me conclude by making an important point. I want you, Mr. Chairman, and this committee to be aware of the fact that the National Wildlife Federation does not make it our habit to enter into disputes regarding the suitability of Presidential nominees for high level appointments. We basically believe that an administration has the right to bring to town their management team. In the 9 years that I have been the chief executive officer of the National Wildlife Federation, only once did we oppose the confirmation of a nominee of the previous administration.

I hope that you will continue your very careful and thorough review of Mr. Cason's record and his response to questions regarding his past actions and agree with us that his record disqualifies him for the Department of Agriculture's highest environmental position.

Thank you, sir, and I would be happy to answer any questions that you have.

[The prepared statement and appendixes 1-6 of Mr. Hair follow:]

STATEMENT OF JAY D. HAIR, PRESIDENT
NATIONAL WILDLIFE FEDERATION

Mr. Chairman and Members of the Committee, thank you for the opportunity to present the views of the National Wildlife Federation (NWF) on the nomination of James E. Cason to the position of Assistant Secretary of Agriculture for Natural Resources and Environment. My name is Jay D. Hair and I am President of NWF, the nation's largest conservation/education organization with 5.8 million members and supporters, and affiliate organizations in 51 states and territories. I have also been asked to speak today on behalf of the Sierra Club and the National Audubon Society.

As the Committee is aware, the Assistant Secretary for Natural Resources and Environment is the Department of Agriculture's highest-ranking environmental officer, overseeing a host of activities on our national forests and rural lands which affect the condition of those resources as an enduring legacy for present and future generations of Americans. We are especially concerned about the future of our 191 million-acre National Forest System, because the new Assistant Secretary will be in a position to influence the management policies which will take our national forests into their second century. The Assistant Secretary is also responsible for overseeing the programs of the Soil Conservation Service and its administration of the Conservation Title of the Food Security Act of 1985.

We believe that Mr. Cason's record at the Department of Interior is vitally relevant to the Committee's consideration of his suitability for the position of Assistant Secretary, since in his capacity as Deputy Assistant Secretary and Acting Assistant Secretary for Land and Minerals he exercised management and policy development responsibilities affecting hundreds of millions of acres of public lands. Since, according to William Shakespeare, the "past is prologue," we urge Members of the Committee to familiarize themselves with the extensive record of Mr. Cason's actions and initiatives at Interior, since the most relevant consideration of a person's suitability for public office is his existing record as a public servant.

I want the Committee to be aware of the fact that the National Wildlife Federation does not make it our habit to enter into disputes regarding the suitability of Presidential nominees for high-level appointments. In the nine years that I have been the Chief Executive Officer of the National Wildlife Federation, only once did we oppose the confirmation of a nominee of the previous Administration. It is noteworthy and relevant, I believe, to further point out to the Committee that among those nominees with environmental portfolios whom we did not oppose were James Watt, Anne Burford, Robert Burford, John Crowell, Don Hodel, and James Edwards -- all individuals whose eventual environmental records were disastrous.

The Administration's decision to nominate Mr. Cason to this post was met with shock and dismay by the environmental and conservation community, including the National Wildlife Federation, since Mr. Cason's record at Interior was consistently antagonistic toward environmental concerns and subservient to the demands of commodity development interests, in a manner all-too-similar to the attitudes of former Secretary Watt. Moreover, we believe that a review of a number of key issues in Mr. Cason's tenure at Interior are indicative of Mr. Cason's lack of appreciation for the stewardship responsibilities entrusted to officials who preside over our public lands and resources. Although Mr. Cason seems to believe that his critics, NWF included, have objected to his nomination on the basis of only a small number of inconsequential actions, the fact is that the issues described below and others examined by the Committee are issues of major importance to the management of and future disposition of tens of millions of acres of lands - federal and private - or involved resources worth hundreds of millions of dollars. Furthermore, the fact that many of those actions have been repudiated by the current Administration confirms our view that Mr. Cason's behavior at Interior is not only evidence of poor judgement, mismanagement, and insensitivity to the environment, but also indicate that Mr. Cason's attitudes are out-of-step with those of the current Administration on environmental issues.

The following is a review of several important issues that we believe are relevant to the Committee's consideration of Mr. Cason's suitability for the position to which he has been nominated. I have appended pertinent documents and additional information to my statement on each of these issues:

INTERFERING IN THE SPOTTED OWL LISTING PROCESS:

According to the sworn testimony of the former Director of the Fish and Wildlife Service and the findings of a General Accounting Office report, Mr. Cason, as Deputy Assistant Secretary of Interior, intruded into the U.S. Fish and Wildlife Service's deliberations regarding whether the Northern Spotted Owl should be listed as a threatened or endangered species, and pressured the Service not to list. Under provisions of the Endangered Species Act, decisions regarding whether or not species should be listed as "threatened" or "endangered" are to be made solely on an evaluation of the biological risks faced by the species to the exclusion of all other factors. However,

according to a report of the House Merchant Marine Subcommittee on Fisheries and Wildlife Conservation and the Environment, both the former Director of the Service's Region 1 and former Director Dunkle indicated that Cason insisted that under no circumstances should the northern spotted owl be listed:

[Regional Director] Wallenstrom... said that he'd been told by Deputy Assistant Secretary of Interior Jim Cason that there was no way the Department would accept a decision to list the owl. [Director] Dunkle testified under oath before the Subcommittee that Mr. Cason was insistent that the spotted owl not be listed...(House Committee on Merchant Marine and Fisheries, June, 1989)

Although the Committee report states that Mr. Cason told the GAO that Director Dunkle was responsible for decisions on the issue, the GAO report notes that Mr. Wallenstrom "said that one top Interior official made his view clear that the owl should not be listed under any circumstances (GAO/RCED-89-79, February, 1989, p. 11.) According to an article in the March 30, 1989 Washington Post, that "top Interior official" was Mr. Cason.

As a consequence of Mr. Cason's interference the Service initially declined to list the owl. However, in November, 1988 a Federal District Court in Oregon faulted the agency's decision-making process as "arbitrary and capricious" and ordered the agency to provide additional evidence as to why the owl should not be listed. The Service subsequently on June 23, 1989, published a proposed rule in the Federal Register proposing to list the owl as "threatened" under the Endangered Species Act.

Currently, the U.S. Fish and Wildlife Service is receiving public comments on its proposal to list the northern spotted owl as a "threatened" specie under the Endangered Species Act, reversing the earlier decision. As a result of Mr. Cason's interference in the listing process, (1) the Fish and Wildlife Service's initial decision was overturned by a Federal court; (2) the Service has preliminarily decided to reverse its earlier decision, basing its current proposal strictly on biological factors; and (3) the decision-making process has been set back by at least a year and has added fuel to the increasingly polarized controversy over the proper management of the remaining old growth forests of the Pacific Northwest. (See Appendix 1 for further information.)

UNDERMINING CONGRESSIONAL EFFORTS TO REFORM THE MANAGEMENT OF OIL SHALE CLAIMS:

In 1986 then-Deputy Assistant Secretary for Land and Minerals James E. Cason signed an agreement for the Department of the Interior which represented a reversal of its longstanding policy of challenging the validity of pre-1920 oil shale claims. This settlement with a group of oil shale claimants, which was signed over the opposition and against the advice of the Regional Solicitor's office in Denver, conveyed "patents" (essentially fee title) to 82,000 acres of public lands for \$2.50 per acre. Some patentees subsequently sold their claims for \$2000 per acre, inspiring Congressional inquiries and calls for reform. A subsequent investigation by the House Appropriations Committees Surveys and Investigations staff concluded that the resources conveyed for \$2.50 per acre were worth potentially \$164 million in bonus bids under the government's oil shale leasing program. Although the House passed oil shale reform legislation during the 100th Congress with overwhelming bi-partisan support, the Senate did not act and the bill died upon adjournment.

According to Mr. Cason's response to a question from House Mining and Natural Resources Subcommittee Chairman Rahall at a hearing on February 28, 1989, while Congress deliberated over the fate of the remaining 250,000 acres of oil shale claims, Mr. Cason met with claimants in the summer of 1988 and advised those who had not yet filed patent applications to do so. Subsequently, on December 12, 1988, after adjournment of the 100th Congress and prior to the present Administration assuming office, Mr. Cason sent a letter the House and Senate mining subcommittee chairmen, informing them that the Department intended to begin processing patent applications anew, despite the fact that the Bureau of Land Management had not promulgated regulations regarding criteria to be used in assessing the validity of oil shale claims. The Chairmen of the House Interior and Insular Affairs Committee and the House Mining and Natural Resources Subcommittee subsequently wrote to former Secretary Hodel (December 20, 1988) objecting to Mr. Cason's plans, and pointing out the Bureau's failure to promulgate relevant regulations. In January of this year legislation was introduced into the House which would terminate the ability of claimants to seek patents for oil shale claims. In February, Secretary Lujan announced that the Department would not process any oil shale patent applications for

the remainder of the year, and agreed to work with Congress to find a solution to the issue. The Secretary also noted that he "didn't see any sense" in selling oil shale claims for \$2.50 per acre. On February 28, Cason testified before a House mining subcommittee hearing that Secretary Lujan had decided not to process any oil shale patents for the remainder of the year. On June 1, 1989, the House by an overwhelming bipartisan majority, passed oil shale reform legislation.

In summary, the Secretary of the Interior has repudiated Mr. Cason's December 12 decision to process outstanding oil shale patents, and has promised to work with Congress to pass reform legislation. (See Appendix 2 for further information.)

AUTHORIZING PUBLICATION OF THE "MINING IN THE PARKS" RULE:

On December 27, 1988 the Interior Department published a rule signed by Mr. Cason that would effectively reduce the protection afforded by Congress in the federal Surface Mining Control and Reclamation Act (SMCRA) to many environmentally sensitive areas. Section 522 of SMCRA placed certain lands off-limits to coal strip mining, including "national interest lands" (eg., National Parks, Wild and Scenic Rivers, Wilderness Areas), and buffer zones around schools, churches, cemeteries and homes. One caveat was the prohibition on mining in such areas was subject to "valid existing rights". The legislative history of the Act makes clear that Congress intended "valid existing rights" to mean instances where the coal owner had obtained or had made a good faith effort to obtain permission to mine the coal prior to passage of the Act. However, the proposal favored by Mr. Cason would have broadly defined "valid existing rights" as simple fee title to the coal, therefore severely undermining the intent of Congress to protect not only national interest lands from the ravages of strip mining, but also the homes, churches, schools, and family cemeteries in America's coal field communities. Senator Ford aptly characterized the effect of the proposal as "a back-door way of getting money for mineral rights you can't mine without doing any work."

The proposal drew severe criticism from a number of Congressmen and the public. The Department received over 4700 comments on the proposal, most of them critical. On July 18, 1989 Secretary Lujan announced that the Department was withdrawing the proposed rule, stating that the volume of

commentary on the proposal has "shown that much work needs to be done to arrive at a fair resolution of this issue." (See Appendix 3 for further information.)

INTERVENTION IN THE FOREST SERVICE'S DEVELOPMENT OF ITS OIL AND GAS LEASING PROGRAM:

In December of 1988, Mr. Cason attempted to thwart publication of a proposed Forest Service rule governing its decision-making regarding oil and gas leasing on National Forest System lands. Virtually all of Mr. Cason's objections to the Forest Service's proposal related to provisions protecting the environment. Among his objections was his assertion that under the Forest Service's proposal, "...oil and gas leasing would be made subordinate to other resource values and land uses by requiring conformance with forest plans standards and guidelines..." The "solution" to this "problem" was that Forest Plans which preclude oil and gas leasing "should not be used as a basis for denial of leasing but [should] be revised at the earliest opportunity..." Why forest plan standards and guidelines should be applicable to all other activities on national forests but not oil and gas leasing is a question the Committee might wish to pursue with Mr. Cason.

The Forest Service published its proposed rules, which did not include the changes sought by Mr. Cason, on January 23, 1989 with comment period ending on May 23. Final rules have not been published. (See Appendix 4 for further information.)

MISMANAGEMENT OF THE OFFICE OF SURFACE MINING'S PERMIT BLOCK SYSTEM:

Mr. Cason was designated by former Assistant Secretary J. Stephen Griles in 1985 to head the efforts of the Interior Department to develop and implement a computerized surface mining permit block system (the Applicant/Violator system or AVS). As the lead Interior Department official responsible for AVS, Mr. Cason was responsible for the decisions on the design of the system, determining what kind of information to include in the AVS and how the AVS would be implemented.

A 1987 report by the Mitre Corporation pointed out fundamental flaws in the AVS design. Mitre instructed OSM in 1987 that it could not rely on the data from the permit applications for blocking permit decisions. Mitre

recommended that OSM take immediate steps to improve the data on surface mining.

The flaws in the AVS were not corrected under Mr. Cason's leadership. According to a General Accounting Office (GAO) report issued in January 1989: "GAO identified fundamental problems in the automated permit review system.... The information in AVS is insufficient for purposes of recommending the issuance or denial of permits to mine coal because it is often outdated and incomplete.... The poor quality of the system recommendations is primarily the result of inaccurate and incomplete data used by OSM to establish the system's data base." GAO-AFMD-89-31 (January 1989). In the two years since the flaws in the system had been identified by the Mitre Corporation, Mr. Cason failed to correct the problems identified.

In short, under Mr. Cason's management, the AVS effort has been a total failure. The agency has no effective means of blocking the issuance of permits, or of suspending existing permits, of hundreds of scofflaw mine operators who are now or who have been in violation of the surface mining law.

Since the new Administration's appointees arrived at OSM in August 1989, a dialogue has been started between the Department and representatives of the environmental community on ways to improve the AVS. On September 19, 1989 the new Director of OSM represented to the House Interior Subcommittee on Mining and Natural Resources that the Department is fully committed to working out solutions to correct the deficiencies in the AVS. The Department also agreed formally to sit down with representatives of the environmental community to negotiate a settlement to the nine-year old lawsuit, and in particular to address ten major areas of improvement in the AVS. These actions to improve the AVS are a major reversal in agency policy after three years of neglect by Mr. Cason and the Interior Department. (See Appendix 5 for further information.)

INTERFERENCE ON BEHALF OF OIL AND GAS LESSEES IN THE MINERALS MANAGEMENT SERVICE'S ROYALTY AUDIT STRATEGY:

On December 28, 1988 Mr. Cason signed an agreement with the law firm

representing 12 major federal oil and gas lessees obligating the government to limit the scope and time frame for completion of ongoing Minerals Management Service (MMS) audits of possible royalty underpayments worth potentially tens of millions of dollars to state and federal treasuries. The agreement was signed by Mr. Cason on the letterhead of the law firm. State and tribal governments affected by the policy were not consulted. Mr. Cason subsequently directed the MMS to comply with this agreement. This agreement, if carried out, would have severely hampered the efforts of both the states and MMS to collect past due royalties totaling perhaps tens or even hundreds of millions of dollars. MMS has subsequently repudiated the December 28 agreement, after several states objected, and has lengthened the time frame for the states to complete their audits. (See Appendix 6 for further information.)

CONCLUSION

The above examples of initiatives and actions taken by Mr. Cason demonstrate both a consistent lack of appreciation for the stewardship responsibilities entrusted to officials who preside over our public lands and resources, and a wanton insensitivity to the environmental values which he would be obliged to protect as Assistant Secretary. Although various statutes provide for and society expects that our public resources will be managed in part to satisfy our nation's needs for timber, minerals, energy and food, in fact those lands are by statute also required to be managed for a variety of environmental values as well, including the provision and protection of habitats for wildlife and fish, watershed protection, the protection of water quality and quantity, and for their biological and cultural values. Unfortunately, the actions and initiatives of Mr. Cason ignored these important stewardship responsibilities. Again, I urge the Committee to thoroughly review Mr. Cason's record on these and other issues, base its decisions on Mr. Cason's track record, and agree with us that Mr. Cason's nomination should be rejected.

GAO**United States General Accounting Office****Report to the Chairman, Subcommittee on
Fisheries and Wildlife Conservation and
the Environment, Committee on Merchant
Marine and Fisheries, House of
Representatives****February 1989****ENDANGERED
SPECIES****Spotted Owl Petition
Evaluation Beset by
Problems****GAO/RCED-89-79**

B-236976.2

- None of the changes made subsequent to the November 30 draft were peer reviewed, even though they contradicted and replaced information that had been endorsed by outside spotted owl experts.
- The changes to the draft report were not discussed with the study team leader. We asked the Assistant Director of fws Region 1 if the study team member that helped perform the rewrite was authorized to make the changes without contacting the team leader. He commented that the team leader was still in charge despite having gone on to other work and that all of the changes should have been cleared with the team leader. He was unaware that this had not been done. Upon reading the report after it had been finalized, the team leader disagreed with the rewrite and believed it had changed the tenor of the report from one that emphasized the dangers facing the owl to one that supported denying the listing petition.

While changes are an inevitable part of any draft report review process, the nature of the changes made in this case and the way they were made raise questions about whether objectivity was maintained. In the end, the unique steps taken by the study team to ensure the scientific integrity of its report by peer review were compromised by questionable changes requested by fws headquarters officials.

Factors Unrelated to Owl's Biological Condition Considered in Denying Listing Petition

The Director of fws Region 1, who signed the decision denying the spotted owl listing petition, told us that two factors not related to the owl's biological condition contributed to the final judgment. First, he believed that the Endangered Species Act was cumbersome to implement. If the owl were to be listed, he believed owl protection initiatives would be delayed several years and be made more costly by legal actions initiated by interested parties. Alternatively, in his view, cooperative agreements with other federal agencies would enable some protective efforts to get underway more quickly at less cost to the government. If such efforts were unsuccessful, he stated fws would always have the option to list the owl on an emergency basis.

Second, he said his determination was influenced by his belief that the fws Director and other Interior officials would not accept a decision to list the spotted owl as endangered. To explain the climate he believed he was operating in, the Director of fws Region 1 said that one top Interior official made his view clear that the owl should not be listed under any circumstances. While stating that he had received no written directives from the fws Director, the Director of fws Region 1 told us he believed he had correctly grasped the fws Director's similar views during various

B-238078.2

conversations. Other Region 1 personnel also told us that they believed listing the spotted owl was unacceptable to top FWS and Interior officials.

The petition process for the spotted owl was not well documented. Accordingly, we could not identify any internal written record that could resolve questions over how the final decision was ultimately made, who participated in the final decision, whether internal pressure was placed on the Director of FWS Region 1 and, if so, how that pressure was considered. In the context of this essentially undocumented process, the FWS Director and attorneys from Interior's Solicitor's Office pointed out that the formal written finding signed by the Director of FWS Region 1 did not state that nonbiological factors were used to deny the listing petition. They also emphasized that the propriety of FWS' decision on the spotted owl is being contested in active litigation and is subject to judgment by the court.

While there is some disagreement over the extent of FWS headquarters participation in, and guidance of, the decision-making process, the FWS Director, the Director of FWS Region 1, and other FWS officials agree that the Director of FWS Region 1 was ultimately responsible for making and signing the final decision on the spotted owl. His statements indicate that factors unrelated to the risks facing the owl contributed to FWS' denial of the listing petition.

Conclusions

The process used by FWS in reaching its decision to deny the petition to list the spotted owl as an endangered species was beset by many problems. The petition study process was delayed and, as a result, failed to thoroughly address information potentially critical to the owl's condition. The peer-reviewed study team report was substantively altered to make it more suitable for supporting a no-list decision. Finally, while the decision-making process was largely undocumented, the official who made the no-list decision told us he decided to deny the listing petition at least partially in response to a belief that top FWS and Interior officials would not accept a decision to grant the petition. These problems raise serious questions about whether FWS maintained its scientific objectivity during the spotted owl petition process.

FWS' performance in handling the spotted owl decision is currently before the district court. In light of this ongoing litigation, we have no recommended actions at this time.

Have a Foe at Forest Service?

Rare Bird's Protection Is Up in the Air

W.P. 3/30/89

Associated Press

President Bush's nominee to oversee the Forest Service has adamantly opposed designating the spotted owl as an endangered species, the fired director of the Fish and Wildlife Service's West Coast office said.

James Cason was nominated last week to be assistant secretary of agriculture for natural resources and environment, which controls the Forest Service and the Soil Conservation Service.

As the current deputy assistant secretary for land and minerals management at the Interior Department, Cason oversees the operations of the Bureau of Land Management and the Office of Minerals Management Service.

The Forest Service and the Bureau of Land Management are embroiled in lawsuits over efforts to protect the spotted owl, which is thought to nest only in the ancient forests of the Northwest.

Cason "was adamantly opposed to listing the spotted owl as an endangered species," Rolf Wallenstrom, the fired Fish and Wildlife Service official said. "He was part of the group at Interior putting pressure on the director" of the Fish and Wildlife Service.

Cason, through spokeswoman Kelly Shipp, "categorically" denied that he exerted pressure on the Fish and Wildlife Service not to list the spotted owl as endangered.

"He said he contributed to the policy process and was asked for his opinion," Shipp said.

Wallenstrom was fired as director of the Fish and Wildlife Service's Region 1 Office earlier this year after refusing to take a job as a special assistant to the director.

At the time he was fired, Wallenstrom said that he and others were being punished by Frank Dunkle, the agency's director, for their views on issues that were at odds with those of the Reagan administration.

The Fish and Wildlife Service decides which species should be protected under the federal Endangered Species Act.

**INQUIRY INTO CERTAIN MANAGEMENT PRACTICES
OF THE U.S. FISH AND WILDLIFE SERVICE**



OVERSIGHT REPORT

OF THE

**Subcommittee on Fisheries and Wildlife Conservation
and the Environment**

of the

**Committee on Merchant Marine and Fisheries
U.S. House of Representatives**

June, 1989

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B. Instances where it is alleged that political considerations interfered with the proper conduct of the scientific and legal responsibilities of the FWS.

1. The spotted owl case.

In February, 1989, the GAO released a report (GAO/RCED-89-79) alleging that the FWS mishandled a petition it had received to list the spotted owl as an endangered species under the Endangered Species Act (ESA). The Subcommittee agrees and finds that subsequent actions by the FWS validate the GAO allegations.

In January 1987, the FWS received a petition from an environmental organization to list the spotted owl as endangered. Under the ESA, the FWS is given one year to decide whether or not to list the species. That decision must be based solely on biological considerations.

In December 1987, the FWS determined that the owl was not endangered and denied the petition. That decision was challenged in Federal court and in November, 1988, the Court ruled that the FWS had failed to support its conclusion that the owl should not be listed as endangered. In late April of this year, the FWS submitted a revised determination proposing to list the owl as "threatened".

The GAO, at the request of the Subcommittee, conducted a review of the Service's initial handling of the spotted owl petition. Its report concluded that:

- FWS management changed the report prepared by its regional study team from one that emphasized the dangers facing the owl to one that could more easily support denying the listing petition. These revisions, unlike the original report, were not subject to outside scientific peer review.

- Contrary to law, factors in addition to the owl's biological condition were considered in deciding to deny the listing petition.

- The quality of the FWS analysis was compromised by delays in Washington resulting from efforts by Interior Department officials to find a way to avoid accepting the spotted owl petition for review.

In addition to the findings in the GAO report, the Subcommittee has determined that contrary to his assertion to GAO that he was "completely disengaged" from the handling of the spotted owl petition, Director Dunkle was directly involved in the handling of the petition at all key points.

Mr. Dunkle has argued that decisions on the spotted owl petition were delegated to the FWS Director for Region 1, Mr. Rolf Wallenstrom. Mr. Wallenstrom, however, said that he'd been

told by Deputy Assistant Secretary of Interior Jim Cason that there was no way the Department would accept a decision to list the owl. Mr. Dunkle testified under oath before the Subcommittee that Mr. Cason was insistent that the spotted owl not be listed. Mr. Cason, in turn, told the GAO that Mr. Dunkle was responsible for decisions on the issue.

The Subcommittee is very concerned that the FWS failed, in the judgment not only of the GAO but of a Federal court, to produce a proper scientific basis for its original decision not to list the owl. It is even more disturbing that this failure stemmed not from a lack of scientific expertise available to the FWS, but instead from instructions issued by Washington to disregard the product of that expertise. Finally, the Subcommittee is troubled by the unwillingness of any official of the FWS to accept responsibility for having made key early decisions in this case.

The Subcommittee strongly reaffirms its commitment to the letter and spirit of the ESA. It should not require a court order for FWS officials to understand that decisions to list or not list species under the ESA must be made solely on biological grounds. The FWS has an obligation to respond to petitions filed under the Act in a timely and professional manner. Someone in the FWS, whether it is the Director or a person designated by the Director, should assume full responsibility for seeing that the requirements of the ESA are carried out. A written record of decision-making should be maintained. And pressures to subvert the ESA process, from whatever source, should be firmly rebuffed.

2. Niakuk Causeway.

The Subcommittee received an allegation that the FWS field office in Fairbanks had been instructed to collect and destroy files related to its consideration of a permit to build a gravel filled causeway to an offshore oil field on the northern coast of Alaska.

The Subcommittee finds that the allegation is true, but that the order to destroy the files in question was not carried out.

The Subcommittee has no problem with the routine disposal of preliminary draft reports that are subsequently revised in the course of normal, internal, FWS operations. But we do not accept the need to order the destruction of documents containing valuable, professionally prepared and reviewed technical information on the possible environmental impacts of a proposed Federal action. Department officials should be prepared to justify their policy positions on the basis of a complete record of decision-making.

According to information provided to the Subcommittee, the order to collect and destroy the file on the Niakuk proposal was made in a phone conversation from Washington to the Fairbanks

The applicants also seek permissive intervention under rule 24(b)(2).¹ The Court does not find that intervention by the applicants would unduly delay or prejudice the adjudication of this case. However, the applicants have not shown that they will significantly contribute to the full development of the underlying issues in this suit. *Cf. Spangler v. Pasadena City Board of Education*, 552 F.2d 1326, 1329 (9th Cir. 1977). The Department of the Interior through its counsel is fully competent to defend its decision. Further, it is immaterial that the applicants' economic interest will not be represented by other parties since their economic interest cannot be considered in this case.

Accordingly the motion of the timber companies and the coalition to intervene by right and by permission is hereby DENIED. In addition, the applicants' motion for summary judgment is stricken.

IT IS SO ORDERED.

Northern Spotted Owl v. Hodel

No. C88-5732 (W.D. Wash. Nov. 4, 1988)

The court holds that the Fish and Wildlife Service's (FWS's) decision not to list the northern spotted owl as a threatened or endangered species under the Endangered Species Act was arbitrary and capricious. The court first holds that the decision not to list the owl as endangered was arbitrary and capricious. The agency's status review of the owl population and a finding that it entered in response to a listing petition filed by environmental groups fail to provide any analysis supporting the FWS's conclusion that listing is not warranted. The FWS's own expert concluded the species was endangered, and numerous other experts agreed with this assessment. The court then holds that the FWS's failure to make an express finding on whether the owl should be listed as threatened is also arbitrary and capricious. The court grants the Service 90 days to provide an analysis for its decision.

[An earlier decision from this litigation is published at 19 ELR 20275.]

Counsel are listed at 19 ELR 20275.

Zilly, J.:

Order of Remand

A number of environmental organizations bring this action against the United States Fish & Wildlife Service ("Service") and others, alleging that the Service's decision not to list the northern spotted owl as endangered or threatened under the Endangered Species Act of 1973, as amended, 16 U.S.C. §1531 *et seq.* ("ESA" or "the Act"), was arbitrary and capricious or contrary to law. Since the 1970s the northern spotted owl has received much scientific attention, beginning with comprehensive studies of its natural history by Dr. Eric Forsman, whose most significant discovery was the close association between spotted owls and old-growth forests. This discovery raised concerns because the majority of remaining old-growth owl habitat is on public land available for harvest.

In January 1987, plaintiff Greenworld, pursuant to Sec. 4(b)(3) of the ESA, 16 U.S.C. §1533(b)(3), petitioned the Service to list the northern spotted owl as endangered. In August 1987, 29 conservation organizations filed a second petition to list the owl as endangered both in the Olympic Peninsula in Washington and in the Oregon Coast Range, and as threatened throughout the rest of its range.

The ESA directs the Secretary of the Interior to determine whether any species have become endangered or threatened² due to habitat destruction, overutilization, disease or predation, or other natural or manmade factors. 16 U.S.C. §1533(a)(1). The Act was

1. Rule 24(b)(2) states:

Upon motion by a person, anyone may be permitted to intervene in an action. . . . (2) When an applicant's claim or defense and the main action involve a common question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

2. The FWS determines "endangered" or "threatened" species which are in danger of extinction throughout all or a significant portion of their range. 16 U.S.C. §1532. A "significant portion" is defined as "any area which is, or may be, occupied by the species which is, or may be, occupied by the species." 16 U.S.C. §1532.

3. The FWS's decision is published in the Federal Register.

amended in 1982 to ensure that the decision whether to list a species as endangered or threatened was based solely on an evaluation of the biological risks faced by the species, and the exclusion of all other factors. See Conf. Report 97-835, 97th Cong. 2d Sess. (Sept. 17, 1982) at 19, reprinted in 1982 U.S. Code Cong. & Admin. News 2860.

The Service's role in deciding whether to list the northern spotted owl as endangered or threatened is to assess the technical and scientific data in the administrative record against the relevant listing criteria in section 4(a)(1) and then to exercise its own expert discretion in reaching its decision. *Cayman Turtle Farm, Ltd. v. Andrus*, 478 F. Supp. 125, 131 (9 ELR 20416) (D.C. Cir. 1979).

In July 1987, the Service announced that it would initiate a status review of the spotted owl and requested public comment, 52 Fed. Reg. 34396 (Sept. 11, 1987). The Service assembled a group of Service biologists, including Dr. Mark Shaffer, its staff expert on population viability, to conduct the review. The Service charged Dr. Shaffer with analyzing current scientific information on the owl. Dr. Shaffer concluded that:

the most reasonable interpretation of current data and knowledge indicate continued old growth harvesting is likely to lead to the extinction of the subspecies in the foreseeable future which argues strongly for listing the subspecies as threatened or endangered at this time.

M. Shaffer, letter of November 11, 1987, to Jay Gore, U.S. Fish and Wildlife Service, Region 1, Endangered Species, attached to *Final Assessment of Population Viability Projections for the Northern Spotted Owl* (Administrative Record at III.A.1).

The Service invited a peer review of Dr. Shaffer's analysis by a number of U.S. experts on population viability, all of whom agreed with Dr. Shaffer's prognosis for the owl, although each had some criticisms of his work.

The Service's decision is contained in its 1987 Status Review of the owl ("Status Review") (Administrative Record at II.C) and summarized in its Finding on Greenworld's petition ("Finding") (Administrative Record at I.D.1). The Status Review was completed on December 14, 1987, and on December 17 the Service announced that listing the owl as endangered under the Act was not warranted at that time.³ 52 Fed. Reg. 48552, 48554 (Dec. 23, 1987). This suit followed. Both sides now move for summary judgment on the administrative record before the Court.

In *T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Ass'n*, 809 F.2d 626, 629-32 (9th Cir. 1987), the Court of Appeals for the Ninth Circuit rearticulated the test for summary judgment. The Court said, at 630-31:

Thus, at this stage of the litigation, the [district] judge does not weigh conflicting evidence with respect to a disputed

The Secretary [of Interior in the case of terrestrial species] shall . . . determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence.

3. In its only opinion construing the Act the Supreme Court declared that "[t]he plain intent of Congress in enacting [the ESA] was to halt and reverse the trend toward species extinction, whatever the cost." *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 184, 37 L. Ed. 2d 117 (9 ELR 20513) (1978) (further construction of nearly completed dam as permanently enjoined after discovery that the dam would eliminate the remaining habitat of an endangered species, the snail darter).

4. Twelve-Month Petition Finding—Northern Spotted Owl. Memorandum from Regional Director, Fish and Wildlife Service, Region 1, to Bureau, Fish and Wildlife Service (December 17, 1987).

5. The Service's Finding provides as follows:

A finding is made that a proposed listing of the northern spotted owl is not warranted at this time. Due to the need for more data on population status and other biological data, priority given by the Service to the further research and monitoring will continue to be high. The Service's decision and Service biologists' support continued efforts to gather data. This finding will be published in the *Federal Register* and the *Administrative Record*.

6. Finding at 5 (Administrative Record at I.D.1).

material fact. *Anderson*, 106 S. Ct. at 2513. Nor does the judge make credibility determinations with respect to statements made in affidavits, answers to interrogatories, admissions, or depositions. See *id.* These determinations are within the province of the factfinder at trial. Therefore, at summary judgment, the judge must view the evidence in the light most favorable to the nonmoving party; if direct evidence by the moving party conflicts with direct evidence produced by the nonmoving party, the judge must assume the truth of the evidence set forth by the nonmoving party with respect to that fact. . . . Inferences must also be drawn in the light most favorable to the nonmoving party.

Anderson, 106 S. Ct. at 2513; *Matsushita*, 106 S. Ct. at 1356-57. This Court reviews the Service's action under the "arbitrary and capricious" standard of the Administrative Procedure Act ("APA"), 5 U.S.C. §706(2)(A). *Friends of Endangered Species v. Jantzen*, 760 F.2d 976, 980-81 [15 ELR 20455] (9th Cir. 1985). This standard is narrow and presumes the agency action is valid. *Ethyl Corp. v. EPA*, 541 F.2d 1, 34 [6 ELR 20267] (D.C. Cir.), cert. denied, 426 U.S. 941 (1976), but it does not shield agency action from a "thorough, probing, in-depth review." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415, 28 L. Ed. 2d 136 [1 ELR 20110] (1971). Courts must not "rubber-stamp the agency decision as correct." *Ethyl Corp. v. EPA*, *supra* at 34.

Rather, the reviewing court must assure itself that the agency decision was "based on a consideration of the relevant factors. . . . Moreover, it must engage in a 'substantial inquiry' into the facts, one that is 'searching and careful.' This is particularly true in highly technical cases. . . ."

Id. at 34-35 (citations and footnotes omitted). Agency action is arbitrary and capricious where the agency has failed to "articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins.*, 463 U.S. 29, 43, 77 L. Ed. 2d 443 [13 ELR 20672] (1983) (citations omitted).

The Status Review and the Finding to the listing petition offer little insight into how the Service found that the owl currently has a viable population. Although the Status Review cites extensive empirical data and lists various conclusions, it fails to provide any analysis. The Service asserts that it is entitled to make its own decision, yet it provides no explanation for its findings. An agency must set forth clearly the grounds on which it acted. *Archison T. & S.F. Ry. v. Wichita Bd. of Trade*, 412 U.S. 800, 807, 37 L. Ed. 2d 350 (1973). Judicial deference to agency expertise is proper, but the Court will not do so blindly. The Court finds that the Service has not set forth the grounds for its decision against listing the owl.

The Service's documents also lack any expert analysis supporting its conclusion. Rather, the expert opinion is entirely to the contrary. The only reference in the Status Review to an actual opinion that the owl does not face a significant likelihood of extinction is a mischaracterization of a conclusion of Dr. Mark Boyce:

Boyce (1987) in his analysis of the draft preferred alternative⁶ concluded that there is a low probability that the spotted owl will go extinct. He does point out that population fragmentation appears to impose the greatest risks to extinction.

Status Review at 24 (footnote added). Dr. Boyce responded to the Service:

6. Boyce had evaluated proposals by the U.S. Forest Service concerning northern spotted owl habitat management. The Forest Service is preparing a Supplemental Environmental Impact Statement (SEIS) on its northern spotted owl policy. A draft SEIS was published in June 1986. [Administrative Record at IV.C.4.] As of this writing, the Forest Service has not released a final SEIS. The draft Supplemental Environmental Impact Statement ("DSEIS") on the spotted owl evaluates a number of management alternatives for northern spotted owl habitat. The Forest Service issued the Supplemental Environmental Impact Statement as a management alternative to the current management plan, which is a well-distributed owl population in the northern Pacific Northwest. The DSEIS also includes a management alternative to the current management plan, which is a well-distributed owl population in the rest of the owl's range. DSEIS at A-25 (1986).

I did not conclude that the Spotted Owl enjoys a low probability of extinction, and I would be very disappointed if efforts to preserve the Spotted Owl were in any way thwarted by a misinterpretation of something I wrote.

M. Boyce, letter of February 18, 1988, to Rolf Wallenstrom, U.S. Fish and Wildlife Service, Region 1, exhibit 7 to Complaint.⁷

Numerous other experts on population viability contributed to or reviewed drafts of the Status Review, or otherwise assessed spotted owl viability. Some were employed by the Service; others were independent. None concluded that the northern spotted owl is not at risk of extinction. For example, as noted above, Dr. Shaffer evaluated the current data and knowledge and determined that continued logging of old growth likely would lead to the extinction of the owl in the foreseeable future. This risk, he concluded, argued strongly for immediate listing of the subspecies as threatened or endangered. M. Shaffer, *Final Assessment of Population Viability Projections for the Northern Spotted Owl*, Memorandum to Jay Gore, U.S. Fish and Wildlife Service, Region 1, Endangered Species (November 11, 1987) [Administrative Record at III.A.1].

This Service invited a peer review of Dr. Shaffer's analysis. Drs. Michael Soule, Bruce Wilcox, and Daniel Goodman, three leading U.S. experts on population viability, reviewed and agreed completely with Dr. Shaffer's prognosis for the owl.

For example, Dr. Soule, the acknowledged founder of the discipline of "conservation biology" (the study of species extinction), concluded:

I completely concur with your conclusions, and the methods by which you reached them. The more one hears about *Strix occidentalis caurina*, the more one hears about *Strix* problems with the data base and in the models notwithstanding, and politics notwithstanding, I just can't see how a responsible biologist could reach any other conclusion than yours.

M. Soule, letter of November 1, 1987, to Dr. Mark Shaffer [Administrative Record at III.B.4].

The Court will reject conclusory assertions of agency "expertise" where the agency spurs un rebutted expert opinions without itself offering a credible alternative explanation. See, e.g., *American Tunaboot Ass'n v. Baldrige*, 738 F.2d 1013, 1016 [14 ELR 20654] (9th Cir. 1984). Here, the Service disregarded all the expert opinion on population viability, including that of its own expert, that the owl is facing extinction, and instead merely asserted its expertise in support of its conclusions.

The Service has failed to provide its own or other expert analysis supporting its conclusions. Such analysis is necessary to establish a rational connection between the evidence presented and the Service's decision. Accordingly, the United States Fish and Wildlife Service's decision not to list at this time the northern spotted owl as endangered or threatened under the Endangered Species Act was arbitrary and capricious and contrary to law.

The Court further finds that it is not possible from the record to determine that the Service considered the related issue of whether the northern spotted owl is a threatened species. This failure of the Service to review and make an express finding on the issue of threatened status is also arbitrary and capricious and contrary to law.

In deference to the Service's expertise and its role under the Endangered Species Act, the Court remands this matter to the Service, which has 90 days from the date of this order to provide an analysis for its decision that listing the northern spotted owl as threatened or endangered is not currently warranted. Further, the Service is ordered to supplement its Status Review and petition Finding consistent with this Court's ruling.

IT IS SO ORDERED.

⁷ The court may consider, particularly in highly technical areas, substantive evidence going to the merits of the agency's action where such evidence is necessary as background to determine the sufficiency of the agency's justification. *Love v. Thomas*, 538 F.2d 1059, 1067 [15 ELR 20561] (9th Cir. 1985).

UNDERMINING CONGRESSIONAL EFFORTS TO REFORM
MANAGEMENT OF OIL SHALE CLAIMS

APPENDIX 2

NOT FOR RELEASE UNTIL AUTHORIZED BY THE COMMITTEE

A REPORT TO
THE COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES

on the

TOSCO v. BODEL DECISION
AFFECTING OIL SHALE MINING CLAIMS-
DEPARTMENT OF THE INTERIOR.

Surveys and Investigations Staff

February 1987

possible for bonus bids and royalty rates on production were used.

Revenues From Bonus Bids

The bonus bid is the amount that is bid for the right to develop and produce the resource. The most recent oil shale leases issued in Colorado and Utah by the Department were in 1974, and brought bonus bids ranging from \$8,800 to \$41,000 per acre. A departmental economic analysis of an oil shale exchange in 1980 estimated the bonus bid to be about \$14,000 per acre. A September 1983 prototype oil shale lease analysis estimated the bonus to be \$7,600 per acre.

Even though several large blocks of patented oil shale claims in the TOSCO v. Hodel settlement are currently being sold, sales value information was not available. Cognizant officials advised that a \$2,000 bonus bid per acre is not unreasonable. Using this conservative bonus bid of \$2,000 per acre, bonus monies that the Government could potentially receive for the 81,896 acres, would amount to about \$164 million.

Revenues from Royalties

The minimum royalty which was specified in the two Colorado leases was about \$.82 per barrel. This minimum royalty was established to entice companies into developing shale oil. However, after shale oil production becomes economical, the Secretary would be expected to establish a royalty rate of 12.5 or 16.67 percent specified in the Mineral Leasing Act. Applying \$.82 minimum royalty and the 12.5 percent rate to the 42 billion barrel oil shale reserve, potential lost royalty revenue would range from \$34 billion (\$.82 royalty per barrel x 42 billion barrels) to \$210 billion (12.5 percent royalty rate x 42 billion barrels x \$40 per barrel).

Interior Dept. revives shale land 'giveaway'

By Gary Schmitz

Denver Post Washington Bureau

WASHINGTON — Barely a month before leaving office, the Reagan administration has resurrected a controversial program that gives oil shale lands in Colorado and Utah to energy companies and land speculators for just \$2.50 an acre.

Congress imposed a moratorium on such transactions in 1967 after the Interior Department turned over 82,000 acres of federal shale lands in Colorado. Environmental groups and House and Senate Democrats assailed the massive property transfer as a "giveaway" of publicly owned resources.

But with the moratorium expired and repeated congressional attempts to adopt a permanent prohibition having failed, Interior's Bureau of Land Management says it will begin processing an addition-

al 250,000 acres of claims scattered across the high plateaus and rugged canyons of western Colorado and eastern Utah.

"Congress has adjourned without enacting oil shale legislation, (and) the department feels compelled to carry out its duties," James Cason, assistant interior secretary for land and minerals management, wrote leaders on Capitol Hill.

Interior Department officials, defending their policy before several congressional inquiries, insisted the land transfers were supported by the 1872 Mining Law and a lengthy history of court rulings.

Ignacio Democratic Rep. Ben Nighthorse Campbell, whose district includes most of the shale lands at issue, questioned the Interior decision.

"This is typical coming from this administration," Campbell said.

OIL SHALE PLAN

■ AFFECTS 250,000 acres.
■ COST: \$2.50 per acre.
■ THERE ARE 1,575 mining claims for oil shale; applications have been filed to take ownership of 334 of those claims.

"Why do they have to push the deadline . . . the second the moratorium runs out. What's their hurry?"

Campbell vowed to reintroduce his legislation that would severely restrict future shale land transfers. In the meantime, he said he will "continue to put pressure on the department" to scrutinize claims carefully.

Federal law allows those who stake out mining claims to take title to surface lands, provided several tests are met, for a nominal filing fee of \$2.50 per acre.

That legal process, known as "patenting a claim," holds firm for minerals like gold and silver. But

Please see SHALE on 9-A

Interior Dept. to again process oil shale claims

SHALE from Page 1-A

claims to oil shale, which never has been successfully developed on a commercial basis, have been subject to sometimes conflicting court interpretations.

Cason said the shale claims outstanding will be reviewed to determine whether a minimum amount of work has been done at the site and other legal requirements have been fulfilled. Title to those claims found to be valid will be granted "expeditiously."

BLM spokeswoman Carol MacDonald on Monday denied administration officials were rushing to put federal land in private hands before relinquishing power in January.

"The feeling is that it's time to march on with these claims," MacDonald said. "Some of these have been up in the air for a number of years."

According to the Interior Department, there are 1,575 mining claims for oil shale. Applications have been filed to take ownership of 334 of those claims. It will not be known how much acreage will go to private ownership until back-ground checks are completed, BLM officials say.

Sen. John Melcher, chairman of the Senate Mineral Resources Subcommittee, said he had not studied the latest Interior decision and could not comment.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 7 1988

Honorable Nick Joe Rahall II
Chairman, Subcommittee on Mining
and Natural Resources
Committee on Interior and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is to inform you that the Department of the Interior intends to begin the further processing of oil shale mining claims patent applications pending in the Colorado and Utah State Offices of the Bureau of Land Management (BLM). We have decided to end our self-imposed delay on further processing these patent applications, including verification of whether the claims in question meet the test of discovery of a valuable mineral deposit within the meaning of the mining laws, and whether such claimants have substantially complied with the assessment work requirements.

We had hoped to reach a consensus with Congress on these issues prior to deciding to go forward with the task of making these determinations. Now that the 100th Congress has adjourned without enacting oil shale legislation, the Department feels compelled to carry out its duties under the Mining Law of 1872 to adjudicate the validity of mining claims for which a mineral patent is sought. As you know, two of the applications in Colorado have been pending since 1982. Our policy will be to expeditiously process mineral patent applications and either issue patent to the successful claimant or contest the claims the BLM alleges to be invalid.

Our standards for the determination of validity of these oil shale claims shall be consistent with the statutes as interpreted by the U.S. Supreme Court. The standard of discovery of a valuable oil shale deposit shall be:

An exposure of the prospectively valuable rich beds of oil shale of the Green River Formation within the boundaries of the mining claim yielding 15 gallons or more of shale oil per ton of rock, in beds not less than one foot thick, yielding 1500 barrels or more per acre. Further, this standard may be met by an exposure of a marlstone tongue of the Green River Formation, yielding not less than three gallons of shale oil per ton of rock upon destructive distillation, inferred to connect to the uppermost strata of prospectively valuable rich beds of oil shale lying at depth within the boundaries of the mining claim, but the inferred connection of the qualifying marlstone tongue need not occur within the confines of the mining claim.

This standard was formulated in Freeman v. Summers (1927), and subsequently held to be the correct interpretation on discovery by the U.S. Supreme Court in Andrus v. Shell Oil Co. (1980).

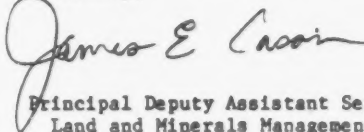
The standard for measuring substantial compliance with assessment work requirements of the mining law shall be:

A mining claimant shall annually perform not less than \$100 worth of labor or make improvements valued at not less than \$100 per claim in an effort to develop a valuable mine. A lapse of qualifying assessment work performance of two or more years duration is sufficient basis upon which the United States may contest the validity of the mining claim, except that resumption of assessment work prior to the initiation of a challenge is an absolute defense in a contest brought on that basis.

This criterion is the result of several cases interpreting the Federal Government's role in policing assessment work performance. In Hickel v. TOSCO (1970), the Court held that the United States could contest mining claims for which only insubstantial or "token" assessment work was alleged to have been performed, but let stand earlier rulings which greatly limit the basis upon which such challenge could be made. Wilbur v. Krushnic (1930) holds that the resumption principle of the mining law (30 USC §28) bars challenge of mining claims by the Government as well as by rival claimants after assessment work is resumed. Virginia-Colorado Development Corp. v. Ickes (1935) holds that a lapse of one year in duration is not sufficient to support a contest by the Government.

As always, we remain available to discuss our views on these issues. Should Congress continue to feel compelled to propose legislation to address oil shale claims, we would be pleased to participate in the process to ensure that reasonable, equitable legislation is forthcoming.

Sincerely,



Principal Deputy Assistant Secretary --
Land and Minerals Management

[illegible]

BOB VOLPE ALABAMA
HAROLD LAMAR JR NEW MEXICO
HERBERT J. LACOMARRE CALIFORNIA
JOHN MARSHALL MONTANA
JOHN CHERRY WYOMING
CHARLES PATRICK JR. CALIFORNIA
LARRY CANN, OREGON
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ELTON GALLAGHER CALIFORNIA
STANLEY S. BAKER, LOUISIANA

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

December 20, 1988

STANLEY SCOVILLE
STAFF DIRECTOR
AND COUNSEL

ROY JONES
ASSOCIATE STAFF DIRECTOR
AND COUNSEL

LEE MELVAM
GENERAL COUNCIL

RICHARD AGNEW
CHIEF MINORITY COUNSEL

Honorable Donald P. Hodel, Secretary
U.S. Department of the Interior
Washington, D.C. 20240

Dear Mr. Secretary:

Last week we received letters from Mr. James Cason, Principle Deputy Assistant Secretary for Land and Minerals Management, advising us that the Department plans to process oil shale claim patent applications pending in the Colorado and Utah offices of the Bureau of Land Management.

This notification is somewhat disconcerting in light of the fact that any validity determinations for these claims would be made without the benefit of BLM completing its intended rulemaking to define the criteria to be used to determine whether an oil shale claim is valid. As such, we believe the Department would be ill-advised to proceed at this time with the processing of any oil shale claim patent applications. Instead, we would suggest that no action be taken on these claims until a final rule is in effect setting forth the discovery and assessment work compliance standards that will be used to determine claim validity.

As you are aware, issues relating to these oil shale claims have generated a great deal of controversy and are the subject of a considerable degree of public interest. Currently at stake are approximately 11 patent applications covering about 24,000 acres of public land in the State of Colorado as well as one patent application for 183 claims in the State of Utah. There are also a number of other oil shale claims in existence for which no patent applications are pending as of this time.

A central element of the ongoing controversy surrounding these claims involves their validity. Serious questions have been raised over the efficacy of the discovery and assessment work standards Mr. Cason has advised us the Department intends to apply to determine the validity of the pending patent applications. These standards are by no means beyond reproach and are especially vulnerable because they were not the subject of a rulemaking.

Honorable Donald P. Hodel, Secretary
page 2 - December 20, 1988

It was for this reason that Subcommittee Chairman Rahall in an August 6, 1987, letter to Assistant Secretary Steve Griles suggested the Department make what it termed at the time its "preferred options" on the discovery and assessment work standards the subject of a rulemaking. A copy of this letter is enclosed.

On February 26, 1988, in response to several written questions submitted to the BLM as part of the Subcommittee on Mining and Natural Resources budget oversight hearing, Chairman Rahall was advised by BLM Director Robert Burford that the agency was in fact "in the process of drafting rules for two major elements regarding oil shale mining claim validity."

Director Burford's written response went on to state: "We anticipate a proposed rulemaking will be published this Spring for public comment. This is made necessary by the August 12, 1987, Tenth Circuit Court order vacating the Tosco v. Hodel decision, followed by Judge Finesilver's order for the Department to likewise vacate its rulings which led to that litigation."

Moreover, we would point out that Director Burford concluded with this statement: "Lacking further Congressional directives after the expiration of the patenting moratorium, BLM does not anticipate taking further action on unpatented oil shale mining claims until the discovery and substantial compliance issues are resolved."

These responses certainly would lead one to believe that the Department: 1) Plans to undertake a rulemaking on oil shale claim validity standards, and, 2) Did not plan to process any oil shale claim patent applications until this rulemaking was completed.

In light of the fact that the Committee received no further communication on this matter until Mr. Cason's letter of December 7, 1988, by now proposing to proceed with the processing of these patent applications without a final rule we are witnessing what amounts to a complete contradiction of Director Burford's statements to the Subcommittee.

We would further note that validity standards were beyond the scope of both the oil shale bill passed by the House of Representatives and the version considered by the Senate Committee on Energy and Natural Resources during the last Congress. In addition, the Congressionally mandated moratorium on the issuance of patents for oil shale claims

Honorable Donald P. Hodel, Secretary
page 3 - December 20, 1988

expired last March did not affect the Department's ability to conduct a rulemaking on validity standards. As such, no legislative restraints have been placed on the Department's stated intent, as expressed last February by Director Burford, to promulgate a rule.

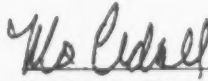
For the reasons stated in this letter, and since it is our understanding the BLM still intends to proceed with this rulemaking, we can find no justification for the Department to process oil shale patent applications until such time as the discovery and assessment work standards have been the subject of public comment and published in the form of a final rule. It will only be through such a rulemaking can the Department hope to have any public confidence in its actions in this matter.

Your consideration of this request would be greatly appreciated.

Sincerely,



NICK J. RAHALL, II
Chairman, Subcommittee on
Mining and Natural Resources



MORRIS K. UDALL
Chairman, Committee on
Committee on Interior and
Insular Affairs

88 The Charleston Gazette, Thursday, January 2, 1988

Rahall criticizes Interior Department

By Paul Nyden
INVESTIGATIVE REPORTER

Rep. Nick Joe Rahall, D.-W.Va., blasted Interior Department lame ducks Wednesday for trying to pave the way for coal mining in people's back yards, family cemeteries and public parks. The congressman also criticized department officials for trying to sell off federal oil shale lands for \$2.50 an acre. "That's less than the price of a six-pack of Coca-Cola," Rahall said.

Several environmental groups, including the National Wildlife Federation, are also challenging the proposed regulations. The Interior Department published them last week in the Federal Register.

Rahall said, "President-elect Bush is being ill-served by the activities of these Reagan administration political appointees who, in the 11th hour, are creating a lot of baggage that will have to be carried by the new Interior secretary."

The Surface Mining Control and Reclamation Act of 1977 prohibits mining within national parks, within 100 feet of graveyards and within 300 feet of homes — subject to the existence of "valid existing rights." The Carter administration interpreted valid existing rights to mean a coal operator must have made an effort to obtain mining permits prior to the time SMCRA was passed.

Rahall said the new interpretation of valid existing rights is so wide open that it would completely undermine the protections sought by Congress.



Rahall

Jim Zola, a mining specialist on Rahall's staff, said the proposed rules pose the biggest threat to the New River Gorge. Interior Department officials say Rahall and Zola exaggerate the danger as that they would buy out property owners before allowing mining in national parks.

"There are two flaws to this argument," Zola said. "The Reagan administration has always opposed the appropriation of funds for land acquisition. Whether Bush will continue to do this, we don't know. The second problem is what do you do with a guy who doesn't want to sell? You have to try to force the National Park Service to go ahead with a condemnation. . . . No one is enthused with condemnations."

Rahall said the proposed rules are a disservice to the coal industry itself, as well as to coalfield residents. "This proposed rule also creates an unsolicited public relations problem for the coal industry in this country, the vast majority of which has no interest in mining in these areas," Rahall said.

Rahall also reiterated another concern he expressed in early December, when the Interior Department began processing applications to sell oil shale lands to private citizens for \$2.50 an acre. "Immediately at stake are well over 24,000 acres of federal lands currently covered by applications with an additional 228,000 acres under claim," he said.

Zola called the proposed oil shale deals a giveaway. "One night in 1984, the Department of Interior sold 83,000 acres at \$2.50 an acre. Do you know what happened then? Within one week, a number of the individuals who bought the land for \$2.50 an acre sold it for \$2,000 an acre to major corporations. It is outrageous. This is public land."

7/2
CHARLOTTE
GAZETTE

Protect the gorge

THE MOORE administration failed to control rip-and-run strip miners, and the Reagan administration was cozy with exploiters of national park lands — so it's a miracle that West Virginia's magnificent New River Gorge National River hasn't suffered more damage than it has.

Sen. Jay Rockefeller, D-W.Va., put the strip-ping issue in perspective during a confirmation hearing for the Bush administration's interior secretary, Manuel Lujan. Calling the New River Gorge "a supreme asset of our state," Rockefeller said:

"The idea of mining in the gorge, or on the rim of the gorge, is extraordinary. Under the previous administration's rulings, mining could have been carried out in the gorge area. . . . The mining is visible and repugnant in every sense of the word."

In response to the senator's questions about protecting the gorge, Lujan, a Republican from New Mexico, blathered about honoring the "valid existing rights" of owners of private land within the park. But an Interior Department

aide later said the agency will attempt to purchase the land or compensate owners for minerals, rather than allow mining.

In its concern for the owner class, the Reagan administration proposed paying landowners for coal under national park lands when the owners are forbidden to strip their property. Sen. Wendell Ford, D-Ky., although a champion of the coal industry, called this plan "a back-door way of getting money for mineral rights you can't mine, without doing any work." We agree.

Every West Virginia member of Congress should keep close watch over federal actions to make sure that the state's mountain splendor is guarded and its tourism potential isn't damaged.

Rockefeller expressed the need well:

"West Virginia has the highest rate of plant closings of any state in the country. In 1982 and 1983, unemployment was 21 percent . . . nothing less than a stunning human tragedy. . . .

"Tourism is quite important, especially for the southern part of the state. It has a special power, a special attraction, a special hope."

PHILADELPHIA INQUIRER 1/30/89

Stop the great coal-field giveaway

By MICHAEL ZIMMERMAN

Congress did not ban coal mining in national parks and national wildlife refuges until 1977. Then, at last recognizing that some federal lands needed protection from development and despoiling, it passed the Surface Mining Act. But even that measure, strenuously challenged by industry, was not all that strong. It permitted future mining operations by all who held valid mining claims at the time.

Now, years later, the Interior Department is preparing to take a huge step backward to ease such those stringent restrictions. The department's proposal would give each state the right to determine what constitutes a valid mining claim. With state laws dramatically laxer than federal regulations, the proposal could open as much as four million acres of previously protected federal land to the ravages of coal mining.

According to the proposal, the federal government could reprotect these lands by buying back the mining claims for millions of dollars. It is foolish for taxpayers to have to spend such large sums of money to gain no more protection than is currently in place. And it seems unlikely that the government will do so since the Interior Department is actually working frantically to simplify the transfer of public lands to private developers.

Catherine Carlson, legislative representative of the National Wildlife Federation, has said that the proposal is "a tremendous giveaway to the coal industry."

The possible political repercussions of such a giveaway during a period of environmental reawakening in the country were not ignored, even on the Reagan administration. Instead of announcing the proposal when it was finalized in September, the Interior Department — at the request of the White House — stalled and made the an-



WILLIAM A. CHRISTIAN

nouncement just two days after Christmas.

It is just possible that the Bush administration's awareness of the environmental resurgence has provided an opening through which our beleaguered federal lands might be saved. John Wright, spokesman for the Interior Depart-

ment, has stressed that the coal mining proposal "is in the hands of the public, not the department. The public will review the proposal before there is a final rule."

The opportunity is there, and the public should quickly and seriously take advantage of it.

Besides possibly derailing this proposal, public comment would serve another important purpose. It would put the Bush administration on notice that a large portion of the public has respect and appreciation for an environmental ethic. And it would make it clear that the public considers environmentalism to be more than the protection of a few locations that are good for hunting and fishing, and more than mere worry about the greenhouse effect or the ozone layer.

We must state early on that many of us care deeply about wilderness and wildlife for their own sake. Such care coupled with effective stewardship is what being an environmentalist is all about. This is the message that a vocal opposition to the Christmas coal giveaway will send.

Throughout most the Reagan years, the environmental community was forced into a defensive position, constantly battling anti-environmental ideologues in the federal government. Now with a self-professed environmentalist in the White House, who already has chosen a well-respected environmentalist to head the Environmental Protection Administration, it is time for the environmental community to assume an offensive role.

The first step is to meet the challenge offered by the Interior Department to the coal giveaway program. If the final outcome is indeed "in the hands of the public," then it is time to put those hands to work shaping a sounder and more effective national environmental policy.

Michael Zimmerman is professor of biology at Oberlin College.

COURIER-JOURNAL
June 4, 1989

Senators seek to stop plan redefining mining rights

Associated Press

WASHINGTON — Kentucky senators asked the Interior Department on Friday to withdraw a controversial proposed rule that opponents say would allow strip mining of coal in national parks and forests and around homes, schools and churches.

"I have some real concerns with the effect this rule might have on the over 2.8 million acres of Kentucky land that has been protected from mining since 1977, including areas of the Daniel Boone National Forest," said Republican Sen. Mitch McConnell. "I believe the intent of this proposed rule has been misinterpreted by the interested parties and the whole approach ought to be re-evaluated."

The rule, proposed in the closing days of the Reagan administration, was an attempt by the Office of Surface Mining to redefine valid existing rights and to deal with the issue of private ownership of coal deposits in areas previously restricted to coal mining under the surface mining act of 1977.



McConnell



Ford

Opponents claim it would loosen restrictions on surface mining in prohibited areas, including previous buffers surrounding private homes and churches.

"For the life of me, I can't see why OSM did not leave well enough alone," said Sen. Wendell Ford, a Democrat.

"The proposed change transfers to the states more responsibility for determining if holders of mineral rights have a valid claim to mine public lands.

"That places an enormous burden on the state, which would be tied up in litigation for years."



DEPARTMENT of the INTERIOR

news release

OFFICE OF THE SECRETARY

For Release July 18, 1989

John Wright (202) 343-3171

INTERIOR SECRETARY WITHDRAWS RULEMAKING PROPOSAL ON VALID EXISTING RIGHTS

Long Beach, CA. -- Secretary of the Interior Manuel Lujan today announced that the Interior Department is formally withdrawing a December 1988 rulemaking proposal aimed at determining when property owners have "valid existing rights" to mine coal in areas protected by the Surface Mining Control and Reclamation Act.

"America's national parks and natural treasures need to be protected from surface mining," Lujan said. "Clearly this is a difficult issue where ensuring the protection of these areas and recognizing valid existing rights must be carefully weighed."

"Analysis of more than 4,700 individual comments from the public, plus public input at six hearings held across the country, have shown that much work needs to be done to arrive at a fair resolution of this issue," the Secretary added. "Bringing new management on board at Interior's Office of Surface Mining, gives us an opportunity to take a fresh look at this difficult issue. Bringing this issue to a close will be a top priority for the new team."

Official notice of the withdrawal is being published in the Federal Register.

- DOI -

The New York Times

NEW YORK, WEDNESDAY, DECEMBER 28, 1988

U.S. May Open Some Parklands To Coal Mining

By PHILIP SHABECOFF

Special to The New York Times

WASHINGTON, Dec. 27 — The Interior Department today proposed rules that could open as many as four million acres of national parks and other protected Federal lands to coal mining.

Congress prohibited coal mining on these lands in 1977 but made an exception for holders of mining claims that were valid at the time. How to define such holders has been a matter of dispute, and today's decision would broaden the qualifying rules by making state laws the determining factor.

Interior Secretary Donald P. Hodel has repeatedly said he would not allow mining in national parks. Under the proposed rules, however, the Government would have to buy back mining claims if it wanted to continue to protect some of the parks and other public lands.

Cost Put at Millions

Environmentalists said this would mean that the Government might have to pay many millions of dollars to protect parks and other land Congress thought it had already protected from the impact of coal mining.

National Park Service officials said only a few parks, including the New River Gorge in West Virginia, were seriously threatened by private mining claims. But claims in wildlife refuges,

Continued on Page A15, Column 1

U.S. RULE MAY OPEN PARKS TO MINING

Continued From Page A1

wilderness areas and historic sites push the number of potentially affected acres to about four million.

Environmentalists said the proposed rules could also allow mining closer to schools, churches and cemeteries than is now permitted.

'A Tremendous Giveaway'

Catherine Carlson, legislative representative of the National Wildlife Federation, the nation's biggest conservation organization, called the proposed rule "a tremendous giveaway to the coal industry in the final days of the Reagan Administration."

David Branand, a lawyer for the National Coal Association, an industry group, said that he had not had time to examine the proposed rule changes in detail but that they appeared to be intended simply to carry out the will of Congress: that holders of valid rights to mine coal be allowed to exercise those rights.

A statement by the Interior Department said the rule was intended to resolve conflicts involving mining claims on Federal lands and to insure "that private property rights are recognized."

Public Comment Until March 7

"It is in the hands of the public, not the department," said John Wright, a spokesman for the Interior Department. "The public will review the proposal before there is a final rule." Today's notice said public comment would be taken until March 7.

The proposal, published in today's Federal Register, would allow the law of individual states to determine who has "valid existing rights" to mine coal from lands otherwise protected by Congress when it passed the Surface Mining Act in 1977.

Except for the holders of such rights, the act prohibited coal mining in national parks, wildlife refuges, wilderness areas and other protected Federal lands and historic sites. It also forbade such mining within 300 feet of homes, schools, churches, institutional buildings and public parks and within 100 feet of cemeteries.

Initially, the Interior Department interpreted the exception to apply to those who had obtained all necessary Federal and state permits to mine coal when the act was passed, on Aug. 3, 1977. A court decision in 1980 modified this interpretation to include all those had tried in good faith to obtain the permits by that day.

State Laws Would Govern

Today the department proposed that the laws of each state determine what constitutes a valid existing right.

Mr. Wright, the Interior Department spokesman, said the rules would establish the principle of "state primacy."

The proposal offers two options. One would give each state the authority to determine whether a good-faith effort had been made to obtain mining rights.

The second option, which is still more flexible, would assume that mining rights are valid if the holder can demonstrate ownership of a claim and the authority to mine the claim under state law.

Interior Department officials said that no preference was being given to either option at this point.

The proposed rules were scheduled to have been issued in September but were put off until after the Presidential election at the request of the White House, according to Interior Department officials.

Although the final rules will not be drafted before the next Administration takes power, President-elect Bush's choice as Interior Secretary, Manuel Lujan Jr., is not expected to make substantial departures from the practices of the current Administration.

Ms. Carlson of the Wildlife Federation complained that the proposed rule continued the Reagan Administration's policy of placing the interests of industry over those of citizens.

While the department promises to buy mining claims that threaten the parks, such purchases would be subject to the Congressional appropriations process.

INTERVENTION IN THE FOREST SERVICE'S DEVELOPMENT OF ITS OIL AND GAS LEASING PROGRAM

APPENDIX 4

Interior, Forest Service clash over proposed lease rules

Tussle over oil drilling curbs

By ANDREW MELNYKOVYCH
Star-Tribune Washington bureau

WASHINGTON — The Interior Department is objecting to new Forest Service rules, saying they place too many restrictions on oil and gas development in national forests.

Rep. Nick Rahall, D-W.Va., the chief House author of a 1987 law that switched authority over petroleum development on forest lands from Interior to the Forest Service, said the Interior Department action is a last-minute attempt by the outgoing Reagan administration to undo congressional action.

"These actions are outrageous and represent a direct assault on

good stewardship of our natural resources," Rahall said in a prepared statement. "President-elect Bush is being ill-served by actions (that) are creating a lot of baggage that will have to be carried by the new administration."

But Deputy Assistant Interior Secretary for Lands and Minerals James Cason said his letter to the Office of Management and Budget, where the new rules are being reviewed, is "a normal part of the process." OMB asked for the comments, he said.

"In terms of 11th-hour maneuvering, give me a break," Cason said. "The accusation is cute, it makes for good press, but it doesn't have anything to do with reality."

Cason said his letter reflects "philosophical differences" between the Interior Department and the Forest Service over how public lands should be managed.

"We try to squeeze onto each acre all the compatible uses we can," Cason said of Interior's land use policy.

"It appears that the way the Forest Service is heading is to set areas off for specific uses," he said.

OMB must approve new federal rules before they can be issued as in proposed form. Once they are issued, the rules would be open for public comment and subject to further revision.

Bronson LaMoure, director of
Please see LEASING, A14

Leasing

Continued from A1

minerals management for the Forest Service, said that he "can't deny" that he views Cason's letter as an intrusion on the right that Congress gave the Forest Service to make decisions about oil and gas leasing and development on its own lands. Prior to 1987, those decisions were in the hands of the Bureau of Land Management, an Interior Department agency, with the Forest Service, which is in the Agriculture Department, limited to an advisory role.

LaMoure said the Interior Department had ample opportunity to comment on the rules while they were being written.

"I would like to get them out for public comment," he said. "But I'm not being allowed to get public input and right now I feel like I'm spinning my wheels."

According to LaMoure, the Interior Department is objecting to provisions of the proposed rules that would govern how leasing and development decisions are made in relation to other resources such as wildlife, water and scenery.

The 1987 leasing reform legislation did not resolve the controversy over oil and gas development in environmentally sensitive areas. Congress did not impose any new constraints on leasing and development, and the new rules are being written within the framework of existing laws.

The controversy over the Forest Service's new rules is a continuation of the longstanding controversy over how oil and gas development is conducted on public lands.

Cason of Interior said a major problem with the proposed rules is a provision allowing the Forest Service to "approve or disapprove" drilling on a lease. The Interior Department views that clause as "contingent right" provision, meaning that a leaseholder would have no absolute right to develop a lease, he said.

The provision "introduces uncertainty" into the leasing process, making it less likely that lands will be leased for their fair value, if at all, Cason said. Petroleum industry spokesmen have raised the same objection.

But LaMoure contends that the provision is a "safety valve" that would allow the Forest Service to prohibit development if unexpected circumstances make drilling impossible or environmentally unsound. The Forest Service will attempt to prevent such cases from occurring by examining all "reasonably foreseeable" possibilities for conflict prior to opening land to leasing, LaMoure said.

"We look at it as a multi-staged (environmental) analysis rather than as a contingent rights" provision, he said.

But the Interior Department is also objecting to how the Forest Service will decide which lands will be made available for leasing, LaMoure said.

Leasing decisions will be in the new or updated management plans for each national forest, he said. Wyoming's Bridger-Teton National Forest is the best example of a forest which will incorporate leasing decisions in its management plan, he said.

Northwest Wyoming conservationists are unhappy with the Bridger-Teton plan because it places few areas off-limits to leasing. Conservationists also say the proposed Forest Service leasing rules impose too few, not too many, restrictions on leasing.

LaMoure said the Forest Service's aim is not to put new obstacles in the way of oil and gas development. The Interior Department is misinterpreting the proposed new rules, he said.

"They don't totally understand ... what our intent is," LaMoure said.

The new law, and the rules arising

from it will not make "any difference in the operating procedures" for oil and gas development on national forests, but give the ultimate responsibility to the Secretary of Agriculture, not the Secretary of Interior, LaMoure said.

"My interpretation of the law is that the BLM cannot issue a lease over the objections of the Forest Service," he said. "Before (drilling) can be approved, the surface-disturbing activity must be approved by the secretary of agriculture."

Asked whether he views Cason's letter as an intrusion on Forest Service management responsibility, LaMoure replied "absolutely."

"I can't get into Mr. Cason's head and figure out why they're doing" this, LaMoure said. "Maybe they have a good logical reason, but I can't see it."

Cason said the Interior Department is not trying to tread on Forest Service turf, but is simply responding to a request from the OMB.

"I'm not sure that we're looking for substantive changes" in the proposed rules, he said.

But OMB "needs to decide on which perspective" federal oil and gas leasing policies should take, Cason said.

Rahall aide Jim Zoia said Cason's letter is symptomatic of both philosophical differences with the Forest Service and an ongoing turf battle over oil and gas leasing.

"Interior, through the whole process (of writing the 1987 law) was fighting tooth and nail against giving the Forest Service say over activities on its own lands," he said. "Congress clearly came down on the other side."

The 1987 law clearly gives the Forest Service the responsibility for leasing and development on its lands, and Rahall feels the Interior Department should stay out of the matter. Zoia said.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 20 1986

Ms. Pam Barr
Desk Officer
Office of Management and Budget
725 17th Street, NW., Room 3208
Washington, D.C. 20503

Dear Ms. Barr:

Enclosed are our comments on the Forest Service Proposed Oil and Gas Regulations. If you have any questions, please contact me. Feel free to share a copy with the Forest Service. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "James E. Cason".

James E. Cason
Deputy Assistant Secretary
Land and Minerals Management

Enclosure

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

COMMENTS ON FOREST SERVICE PROPOSED RULEMAKING

GENERAL OVERVIEW

The stated purpose of the proposed Forest Service (FS) rule is to establish procedures for management of oil and gas leasing and surface disturbing activities on National Forest System lands. However, as proposed, the regulations may discourage interest in leasing or, when leasing does occur, provide disincentives to timely full development of leases.

We believe that these proposed regulations underscore a major philosophical difference between the Departments of the Interior and Agriculture. The rule now being proposed is in large part the result of a successful challenge brought against the FS over 8 years ago, in which the court found that FS failure to act on oil and gas lease applications that had been pending over 8 years constituted an illegal withdrawal. The court, at that time, ordered promulgation of rules that would allow timely processing of oil and gas lease applications. The court has since held the FS in contempt for failing to promulgate rules.

We do not discern any change in FS statutes, or in the stance of Congress or the Administration that would support management emphasis on selected resources within the Forest System. Accordingly, we ask that you suggest changes to the proposed rule that address our concerns.

With the passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Reform Act) and the resulting development of the subject regulations, we believe the FS has an opportunity to state an appropriate multiple use policy for FS lands.

Our specific concerns fall under two general headings -- legal interpretations and policy choices. Under each category we have listed some relevant examples.

LEGAL INTERPRETATION

Issue 1. Commitment to development: The FS does not appear to view the issuance of a lease as a commitment to allow development, and believe that such commitment is only made on an individual well basis and only at the time that operations are proposed and approved. While the words "contingent right" do not appear in the regulations, the impact is more insidious than if the words were used because potential lessees have no explicit notice their rights in the lease are limited. Further, had Congress intended a contingent right leasing system, it would have patterned the Reform Act after the OCS Lands Act which explicitly states that OCS leases do not authorize development. If development of OCS leases is subsequently denied by the Government, lessees are permitted to recover all of their costs. Onshore lessees have no such guarantee of recompense for government actions denying drilling rights. In the absence of a specific authority to deny development, the FS proposed regulations could be construed as a taking and a takings analysis should be prepared.

Lastly, the Secretary of the Interior has recently expressed Interior's policy on contingent rights stipulations. In correspondence between Secretary Model and Solicitor General Fried relating to Conner v. Burford litigation, the Solicitor General suggested "... Interior can include stipulations in future leases that make it absolutely clear that the Federal Government retains authority to prevent any significant environmental harm by the lessee, whether or not that harm is necessary to achieve the purposes of the lease (emphasis added)." Secretary Model replied as follows:

The solution proposed in your memorandum demonstrates the error in the Ninth Circuit's decision. It would require us to change the fundamental nature of an onshore oil and gas lease. You would have the Secretary exercise his discretion in a particular way, that is, to make all leases contingent. This approach would change the current practice of doing so only when the Secretary concludes, in the exercise of his best administrative judgment, that sensitive resources are present that require protection. In essence, your solution is a practical implementation of the court's decision that, in effect, mandates a substantive decisionmaking result, rather than a rational pursuit of the NEPA process.

We believe that your proposed solution sets a far worse precedent than anything the Supreme Court might say. Under such a precedent, every permit, license, lease or other authorization would have to be similarly conditioned and be subject to termination should an adverse environmental impact be realized.

The reason is that even if we prepare an EIS, we would face the same conclusion that failure to condition the leases with a "significant impact" or "no surface occupancy" stipulation is unreasonable if there is any chance that an adverse impact could occur, however unlikely. The result of your proposed solution is to change NEPA from requiring a predictive process to mandating the substantive result of conditioning every administrative decision so as to retain discretion to mitigate any adverse impact that was not predicted at the outset.

We believe that the Forest Service is misinterpreting or at least ambiguously describing its authority and that the Reform Act in no way disturbed the rights traditionally granted lessees. Such rights are described at 43 CFR 3101 which states that a lessee has the right to use so much of the surface of a leasehold as is necessary to extract oil and gas, subject only to stipulations attached to the lease, restrictions deriving from specific, non-discretionary statutes, and such reasonable measures as may be imposed by the authorized officer. In other words, the authority of the government to deny operations is limited. If it were not, the leases offered by the government would have only speculative value. As a consequence, bonus bids for leases within the National Forest System would be reduced, many lands would likely remain unleased, and discovery and development of potentially valuable deposits would not occur.

Issue 2. Material noncompliance with reclamation requirements: The proposed rule describes at 30 CFR 228.112 the procedures for determining whether a lessee is in material noncompliance with reclamation requirements and other standards as provided in 30 USC 226(g), or with regulations, lease stipulations, or a surface use plan of operation approved by the FS. The rule does not clarify which of these violations would result in a ban on future lease issuance. We read 30 USC 226(g) as limiting this sanction to noncompliance with reclamation requirements and other reclamation standards. As written, the rule would allow the FS to impose a ban on leasing on a company which is in noncompliance with something as minor as the "neatness" requirement of 30 CFR 228.107(n)(1).

Recommended solutions for Issues 1 and 2: With respect to legal interpretations, we recommend that the preamble and proposed rule be revised such that wherever the authority of the Forest Service to deny operations is discussed, the limitations on the exercise of that authority be clearly stated. As a minimum, they should contain a clear statement that development of the lease can occur. A ban from future leasing would occur only for failure to comply with reclamation requirements or other reclamation standards.

Issue 3. Penalties for violations: The provisions of the proposed rule establishing sanctions for inspection and enforcement violations related to surface uses (30 CFR 228.111(e) and 228.112(a)(1)(v)) rely on authority from national forest statutes rather than that of the Mineral Leasing Act (MLA). This is incorrect since such sanctions can only be applied to violations of the law which authorized the action in the first place. The MLA does not incorporate national forest statutes; therefore, such violations can be subject only to penalties which are established under the authority of the MLA, its amendments or the Federal Oil and Gas Royalty Management Act (FOGKMA), if appropriate.

Recommended solution for issue 3: We recommend that the rule be revised to indicate that the authority for imposing sanctions for violations is derived from the MLA, its amendments or FOGKMA and not forest statutes.

POLICY CHOICES

Issue 4. Bonding requirements: FS regulations appear to require Forest Supervisors to base their recommendation for bond coverage on the estimated cost of reclamation for each and every well (36 CFR 228.10b).

BLM requires fixed minimum bond amounts (\$10,000, \$25,000 and \$150,000), but has the authority to increase the bond under specific circumstances that are spelled out in the regulations (43 CFR 3104.3). One example would be if an operator has caused the BLM to make a demand for payment under a bond within the last 5 years (prior to submitting the APD).

FS would require a bond for total reclamation costs under that bond. This policy overlooks risk analysis that recognizes that there is only a percentage likelihood, rather than a certainty, that the lessor will have to collect on the bond. It is likely that some potential lessees will be discouraged from investing in FS leases. Still others may speculate with FS leases, holding their leases without bond coverage until others have made a discovery or until approached by others with an offer to develop the lease. At the very least, it would sharply curtail the level of activity that any individual operator can afford to conduct simultaneously nationwide on FS lands, thus reducing the pace of development of the FS mineral resource.

Recommended solution for issue 4: For consistency, FS should adopt the language utilized in BLM regulations contained in 43 CFR 3104.3. This would permit the FS to recommend higher bond amounts on a case by case basis, without imposing unnecessary bonding requirements across the board.

Issue 5. Areas available for leasing: According to the proposed rule, the Forest Service would choose to commit to procedures for identifying potential leasing areas and for determining the "suitability" of lands for leasing. The procedures would require the Forest Service to:

- (1) identify areas that have potential for leasing as evidenced by ongoing production, a favorable geological environment, or ongoing industry interest;
- (2) develop a schedule that prioritizes those areas;
- (3) identify whether those areas are legally available;
- (4) review the relevant forest plan to identify standards and guidelines applicable to leasing; and,
- (5) find that leasing operations would be consistent with, or would not be precluded by, the applicable forest plan.

There are a number of problems with these procedures. The first involves the concept of identifying lands which have "potential for leasing," a task which, if it needs to be done at all, would best be done exclusively by industry. Through application of the criteria for identifying such lands, some portion of the Forest System will automatically be removed from further consideration for leasing. In effect, such lands will have been withdrawn without compliance with section 204 of the Federal Land Policy and Management Act.

second, oil and gas leasing would be made subordinate to other resource values and land uses by requiring conformance with forest plan standards and guidelines, regardless of whether such standards and guidelines were developed with consideration given to their impact on oil and gas development opportunities.

Similarly, a finding that leasing would be inconsistent with or precluded by a forest plan would result in an "unsuitability" determination, regardless of whether effects on oil and gas development opportunities had been considered when the plan was prepared. We question why the FS is proposing any type of suitability screen for oil and gas leasing. There is no provision in any law requiring a suitability finding for oil and gas leasing as there is in coal. If lands are legally available, they should simply be open to leasing and development subject only to stipulations and constraints deemed necessary to protect environmental values and to provide for multiple use.

Recommended solution for issue 5: We recommend that the preamble and proposed rule be revised to require the Forest Service to consider leasing on all lands that are legally available, to require that forest plans that would preclude leasing not be used as a basis for denial of leasing but be revised at the earliest opportunity, and to eliminate suitability screens.

MISMANAGEMENT OF THE OFFICE OF SURFACE MINING'S
PERMIT BLOCK SYSTEM

APPENDIX 5

GAO

Report to the Chairman, Committee on
Interior and Insular Affairs
House of Representatives

January 1989

SURFACE MINING

Operation of the Applicant Violator
System Can Be Improved

Printed copies of this document will be available shortly.

GAO/AFMD-89-31

GAO

United States
General Accounting Office
Washington, D.C. 20548

Accounting and Financial
Management Division

9-225149

January 24, 1989

The Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives

Dear Mr. Chairman:

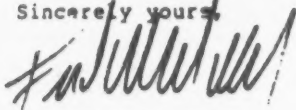
Your December 10, 1987, letter asked us to review the automated permit review system implemented October 1, 1987, by the Office of Surface Mining Reclamation and Enforcement (OSMRE) and its related civil penalty and reclamation collection efforts. This report discusses our assessment of the permit review system. A report on OSMRE's collection efforts will follow.

The new automated system, referred to as the Applicant Violator System, has been plagued from the outset by poor quality data, such as incomplete names and addresses, and by problems in updating the information. Currently, OSMRE continues to rely on a manual process rather than the automated system as the primary means of internal control for ensuring that a permit is denied when an applicant or controlled entity has an outstanding mining violation.

We are recommending steps to improve data quality and other actions that will enable OSMRE to have an automated system which can be relied on for accurate issue or deny recommendations and not one that is operational in name only that requires a 100-percent manual verification. As agreed with your office, unless you publicly announce the contents of this report earlier, we will not distribute it until 30 days from its date. At that time, we will send copies to the agency and other interested parties. Copies will also be made available to others upon request.

This report was prepared under the direction of Jeffrey C. Steinhoff, Associate Director. Other major contributors are listed in appendix III.

Sincerely yours,



Frederick D. Wolf
Director

EXECUTIVE SUMMARY

PURPOSE

The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) was enacted by the Congress to establish workable standards nationwide to prevent harm to society and the degradation of the land and water resources, including severe land erosion and the pollution of water supplies. Since then, reports issued by GAO and various congressional committees have criticized the Department of the Interior's attempts to implement the law and thus protect the environment from unnecessary damage from coal mining operations.

A key provision of the act requires that permits be denied to applicants who have outstanding violations of the act. In light of the difficulties Interior has had in meeting this provision, the Chairman of the House Committee on Interior and Insular Affairs asked GAO to evaluate the automated permit review system recently implemented by the Office of Surface Mining Reclamation and Enforcement (OSMRE). He also asked whether this system, commonly referred to as the Applicant Violator System, could be upgraded by using features of a similar system developed and implemented by the National Wildlife Federation.

BACKGROUND

The Surface Mining Control and Reclamation Act was enacted to protect society and the environment from the impact of irresponsible surface mining practices of some coal mine operators. A key provision of the act is section 510, which requires denial of mining permits to applicants who have outstanding violations of mining regulations. In response to the continued criticism that it has not fulfilled this provision of the congressional mandate and because of a January 1985 court order, OSMRE began developing an automated permit review system to identify operators who have outstanding violations of the act.

RESULTS IN BRIEF

GAO identified fundamental problems in the automated permit review system. From the outset,

EXECUTIVE SUMMARY

system recommendations to issue or deny a permit have been unreliable. In light of this risk, OSMRE relies on extensive manual verification. This practice has delayed both the states' and OSMRE's abilities to fulfill their permitting responsibilities in a timely manner. As long as OSMRE cannot accurately compare applicants to violators, there is an increased risk that applicants with outstanding violations could still receive mining permits.

GAO concluded that although the output of OSMRE's system and that of a similar automated system used by the National Wildlife Federation must be manually verified, the Wildlife system is more comprehensive in determining whether or not a permit should be issued because it has access to state permit and Department of Labor mine safety and health data. Such access enables the Wildlife system to better identify business and ownership relationships between current applicants and those with unabated violations.

PRINCIPAL FINDINGS

System Information
Is Not Always
Current and
Complete

GAO found that information contained in OSMRE's automated permit review system is not adequate for recommending whether mining permits should be issued or denied. Problems identified include

- unreliable data, such as incomplete names and addresses initially entered into the system;
- poor quality of the data, including inconsistencies between hard copy record files and computerized reports, periodically provided by other OSMRE systems; and
- lack of definitions for key issues (such as what constitutes ownership and control of a mining entity and how frequently the information should be updated) during the ongoing system development effort.

In March 1988, OSMRE reported the high error rate of the system. It disclosed that about half of

EXECUTIVE SUMMARY

	the system recommendations to issue or deny a mining permit were reversed following manual verification of the data. (See chapter 2.)
AVS' Ability To Link Applicants to Violators Is Limited	Before OSMRE's system can adequately compare applicants to violators, it must have sufficient data elements and sources to make the best possible linkage. However, OSMRE has not incorporated data from all of the most appropriate sources of ownership and control information into the system. (See chapter 2.)
Manual Verifications Are Not Always Prompt	GAO noted that due to problems with data in the system: -- The agency must manually verify all system recommendations to issue or deny a mining permit, thereby losing much of the benefit of an automated system. In essence, it is still working with a manual system since 100 percent of the recommendations have to be manually verified. -- The manual verifications are not being performed in time to meet states' projected approval dates. -- The timeliness of the manual verifications will become a greater problem when state and environmental violations are incorporated in the system. (See chapter 2.)
More Data in the Wildlife System	GAO's comparison of OSMRE's automated system with a similar system used by the National Wildlife Federation showed that the Wildlife system has additional capabilities. It has a broader data base with which to link applicants and violators and consequently can make more comprehensive determinations of whether or not a permit should be issued. However, the Wildlife system also has inaccurate and incomplete information and its output must also be manually verified. OSMRE is assessing the Wildlife system to identify features which could be used to enhance its own system. (See chapter 3.)

EXECUTIVE SUMMARY

RECOMMENDATIONS

GAO is recommending several actions that the Department of the Interior should take to improve and update the data in its automated systems and to ensure compliance with recent rules and regulations. GAO's specific recommendations are presented at the end of chapter 4.

AGENCY COMMENTS

Throughout the course of this review, GAO discussed its work with responsible officials of the Department of the Interior in order to ensure the accuracy and completeness of the information in this report. Their comments were considered in preparing the report. In accordance with the requester's wishes, GAO did not request official comments on a draft of the report.

**INTERFERENCE ON BEHALF OF OIL AND GAS LESSEES IN THE MINERALS
MANAGEMENT SERVICE'S ROYALTY AUDIT STRATEGY**

APPENDIX 6

LISKOW & LEWIS

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December 28, 1988

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VIA FEDERAL EXPRESS

The Honorable James E. Cason
Deputy Assistant Secretary
Land and Minerals Management
Department of the Interior
C Street between 18th and 19th
Streets, N.W.
Room 6611
Washington, D.C. 20240

Dear Mr. Cason:

The purpose of this letter is to confirm the agreements that have been reached regarding the orders, described below, that were issued by the Minerals Management Service ("MMS") of the United States Department of the Interior ("DOI") and that demand the production of certain specified documents on or before October 11, 1988:

- (1) Orders dated September 30, 1988, issued by Nick L. Kelly, Area Manager, Dallas Area Compliance Office, MMS, addressed to Amoco Production Company, ARCO Oil and Gas Company, Conoco Inc., Marathon Oil Company and Mobil Exploration and Producing U.S., Inc.;

11/11/1988
UNIT 1339

December 28, 1988

PAGE

2

- (2) Orders dated September 30, 1988, issued by Erasmo Gonzales, Area Manager, Houston Area Compliance Office, MMS, addressed to Exxon Company, U.S.A., Shell Oil Company, Tenneco Oil Exploration and Production (a unit of Tenneco Oil Company), Texaco Inc., Transco Exploration Company and Union Exploration Partners, Ltd./Union Oil Company of California; and
- (3) Orders dated September 28, 1988, issued by Larry M. Crow, Area Manager, Lakewood Area Compliance office, MMS, addressed to Chevron U.S.A. Inc.

The companies that have been directed by the above-described orders to produce documents to the MMS are hereinafter referred to collectively as the "Companies."

Specifically, the agreements that we have reached with respect to the orders are as follows:

(1) The MMS will make a good faith effort to obtain from DOI files those documents identified in the orders that are already in the DOI's possession, either because the documents were generated by DOI or because they have been previously filed with DOI. It is anticipated that the MMS will be able to obtain a majority of these documents by making such a good faith effort. If the MMS cannot locate any such documents after a good faith effort to obtain them, the Companies will make a good faith attempt to provide such documents. Although the MMS has stated that it anticipates completing audits of the period October 1, 1980 through September 30, 1983, by September 30, 1989, we understand that this target date may be reasonably delayed for a particular company to the extent that a delay is caused by the MMS' effort to locate documents in DOI's files, the additional time granted to a company beyond the initial October 31, 1988 compliance date or company response time for supplemental data requests beyond the time reasonably provided in the data requests.

(2) As to the remaining documents demanded, the Companies will provide by Monday, October 31, 1988, a suggested schedule of compliance for the production of the documents, along with any documents that have already been prepared for submission.

December 23, 1988

(3) The MMS will proceed with the examination of documents and the audits for the October 1, 1980 through September 30, 1983 period. However, the Companies will identify a vehicle, which must be reasonably acceptable to the MMS, and DOI, if necessary, will issue a Secretarial order promptly, for the Companies to obtain an expeditious judicial resolution of the question of whether the government can, in the absence of fraud, collect additional royalties that are alleged to have been due more than six years prior to the date of the demand.

(4) By agreeing to produce documents and allow audits as part of the agreements reached and confirmed herein, the Companies do not waive, and they specifically reserve, their right to challenge any demands that might be issued in the future either for the production of documents dating back more than six years or that require the payment of additional royalties alleged to have been due more than six years prior to the date of the demand, nor are the Companies acquiescing in the MMS' assertion that it has the authority to require the production of such records or to demand the payment of such royalties.

(5) The MMS and the Companies hereby acknowledge that the MMS orders referred to in this agreement have been modified orally. In the event that a dispute arises between the MMS and any of the Companies regarding such oral modifications, it is agreed that the parties will attempt in good faith to resolve such dispute before taking any further action.

(6) The MMS will promptly issue formal closure letters for all periods prior to September 30, 1980, and it will release the Companies from any obligation to retain documents pertaining to transactions that occurred prior to that date, with the exception of documents that relate to (a) issues identified with respect to each company on Exhibit A attached hereto and (b) pending administrative or judicial appeals. A formal closure of pre-September 30, 1980 periods will not affect any right the government may have to reopen any or all of these periods in the event that it has reasonable grounds to suspect fraud. Issuance of the formal closure letters will not affect the Companies' rights under paragraph 4 herein.

(7) Compliance by the Companies with both the terms herein and the compliance schedules provided on or prior to November 30, 1988, will be deemed to fully satisfy their

LISKOW & LEWIS

PAGE

4

December 28, 1988

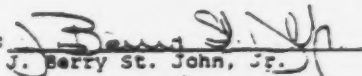
obligations under the above-described orders as modified. This paragraph shall not be construed to limit the RMS' ability to issue follow-up requests for additional documents during the audits consistent with the terms of this agreement.

Please acknowledge that this letter accurately sets forth the agreements we have reached by signing as indicated below and returning same to the undersigned at the above New Orleans address.

Very truly yours,

LISKOW & LEWIS

By:



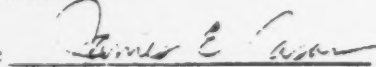
J. Berry St. John, Jr.

Attorneys for Amoco Production Company, ARCO Oil and Gas Company, Conoco Inc., Marathon Oil Company, Mobil Exploration and Producing U.S., Inc., Exxon Company, U.S.A., Shell Oil Company, Tenneco Oil Company, Texaco Inc., Transco Exploration Company, Union Exploration Partners, Ltd./ Union Oil Company of California and Chevron U.S.A. Inc.

ACCEPTED AND AGREED TO THIS
28 DAY OF December,
 1988.

U.S. Department of the
 Interior

By:



James E. Cason
 Deputy Assistant Secretary/
 Land and Minerals Management

CBP-265



United States Department of the Interior

MINERALS MANAGEMENT SERVICE

ROYALTY MANAGEMENT PROGRAM

P.O. BOX 25165

DENVER, COLORADO 80225



IN REPLY
REFER TO:

MMS/RCD
MS 655

JAN 11 1989

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Tom A. Winkelmann
Regional Supervisor - Revenue Accounting
Union Exploration Partners, LTD/
Union Oil Company of California
4635 Southwest Freeway
Houston, Texas 77027

Dear Mr. Winkelmann:

This is to advise you that the U.S. Department of the Interior has completed audits of your firm's practices and procedures relating to the computation and payment of royalties due on minerals removed from Federal and Indian leases. The audit period covered the months prior to September 1980.

Section 103 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) requires the maintenance of records, reports, or information related to the computation and payment of royalties. Except for the following issues that are under appeal or litigation, you are no longer required to maintain such documentation for the production months prior to September 1980:

Issue:	FERC 94 Revenues
Source:	MMS Audit
Audit Initiation:	01/77 --
Issue:	NGLP Pricing
Source:	OIG Audit
Audit Initiation:	01/77 --
Issue:	Scrubber Condensate Valuation
Source:	OIG Audit
Audit Initiation:	01/77 --
Issue:	FERC 93 Refunds
Source:	MMS Audit
Audit Initiation:	06/79 --
Issue:	Dual Accounting on Indian Leases
Source:	MMS Audit
Audit Initiation:	01/70 -- Jicarilla
	01/75 -- Shoshone-Arapahoe
	01/77 -- All Other

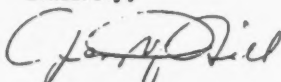
Mr. Tom A. Winkelmann

2

In situations where subsequent evidence at other companies or facilities indicates the possibility of fraud, collusion, or underpayment, this letter does not preclude further examination of records and transactions of previously audited periods.

Section 109 of FOGDMA, and regulations promulgated in 30 CFR 241.51 (1987), authorizes the Minerals Management Service to assess civil penalties for failure or refusal to comply with the requirements of FOGDMA or of any statute, regulation, rule, order, or permit. Consequently, your failure to maintain any records, make any reports, or provide any information required for the purpose of determining compliance with royalty payment laws, regulations, or orders as they relate to any and all records on any and all leases that are or may be affected by the issues identified by this letter may be considered a violation pursuant to 30 CFR 241.51(a)(3) (1987), and could subject you to penalties of up to \$5,000 per violation per day.

Sincerely,



Jerry D. Hill
Associate Director for
Royalty Management

LISKOW & LEWIS

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March 21, 1989

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AUSTIN W LEWIS (1810-1974)

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ROBERT V JORDEN*
CHARLES C BRENNILLON*
GENE W LAFITTE*
BILLY M WINE*
JAMES V PELLETIER*
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JOHN W KING*
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FREDERICK W BRADLEY*
KERRY M MASSARI*
S GENE FENDLER*
THOMAS P GETTEN*
GEORGE M ROBINSON JR*
GEORGE J DOMAS*
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PATRICK W GRAY*
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REGINA R FURRY*
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DANIEL E LORONE*
BRYAN O SCOPFIELD*
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JOHN P GUILLOTT*
MARY S JOHNSON*
KATHLEEN F KETCHUM*
*PROFESSIONAL CORPORATION

OF COUNSEL
ROBERT C SMITH

The Honorable James E. Cason,
Deputy Assistant Secretary
Land & Minerals Management
Department of the Interior
"C" Street between 18th & 19th
Streets, N.W.
Room 6611
Washington, D.C. 20240

VIA FEDERAL EXPRESS

Dear Mr. Cason:

At our meeting in Washington on March 9, 1989, you offered to consider the Industry Audit Task Force's comments regarding suggested revisions to your December 14, 1988 audit closure policy statement. Enclosed is a revised Policy Statement on Audit Closure that the Industry Audit Task Force urges you to adopt. Also enclosed is a statement of the rationale for the suggested modifications to your December 14, 1988 policy statement.

If you have any questions after reviewing the enclosures or if we can assist you in any way regarding this matter, please do not hesitate to call.

Very truly yours,

Deborah Bahn Price
Deborah Bahn Price

DBP:kpa

March 21, 1989

PAGE 2

cc: Peter J. Schaumberg, Esq. (via Fed. Exp.)
P. Kevin Colomb, Esq., Amoco Production
Company
J. Stephen Martin, Esq., Anadarko Petroleum
Corporation
Gary Hoff, Esq., Atlantic Richfield Company
Margaret Broussard, Atty., Chevron U.S.A. Inc.
R. Carol Harvey, Atty., Conoco Inc.
Charles Katz, Esq., Exxon Company
Kirby Iler, Esq., Marathon Oil Company
John Quisenberry, Esq., Meridian Oil Company
Robert Luetttgen, Esq., Mobil Exploration &
Producing U.S. Inc.
Patricia A. Patten, Atty., Oxy USA, Inc.
William E. Browning, Esq., Pennzoil Company
Philip C. Wrangle, Esq., Sonat Exploration
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Shirley C. Friend, Jr., Esq., Texaco Inc.
Robert McIntyre, Esq., Transco Exploration
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Kelly D. Zelikovitz, Atty., Union Texas
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Charles Spann, Esq.
Hugh V. Schaefer, Esq.

007679dtpw

Policy Statement on Audit Closure

The following is the policy to be followed on audit closure at the completion of a company audit:

An overall goal of the Department of the Interior is to provide timely initiation and completion of audit coverage of mineral revenues from Federal and Indian mineral leases by providing expeditious enforcement of royalty payment laws, rules, and regulations without imposing undue recordkeeping burdens on lessees. Audits of mineral revenues will generally be performed using the comprehensive company audit approach covering fixed audit periods and will be completed as expeditiously as reasonably possible. At the completion of each company audit, the Department will promptly issue a letter closing the period covered by the audit and releasing the recordholder from the obligation under Section 103 of the Federal Oil and Gas Royalty Management Act of 1982 to maintain records. The closure letters will release those records not related to issues under appeal or litigation. Failure to maintain records related to issues under appeal or litigation may be considered a violation pursuant to 30 C.F.R. 241.51(a)(3) and could subject the companies to penalties of up to \$5,000 per violation per day. Such closure letters will not affect any right the Department may have to reopen the period closed in the event the Department has reasonable grounds to suspect fraud.

RATIONALE

1. The changes clarify the Department's charge to timely initiate and complete audits resulting in the expeditious enforcement of royalty payment laws without imposing undue recordkeeping burdens on lessees.
2. In addition, changes have been made to conform the language of the Department's policy to the Settlement Agreement as concerns audit closure.
3. The proposed changes should be adopted as the policy of the agency for the following reasons, among others:
 - a. Under the Federal Oil and Gas Royalty Management Act, Congress clearly intended that the Department diligently pursue audits, linking diligence to timely collection.
 - b. Congress mandated release of records at the earliest possible date.
 - c. Consistent treatment will be afforded to all lessees.
 - d. Allowing the Department to demand alleged royalty underpayments after a company has been released from the obligation to maintain records is inequitable since the company may then lack the documentation necessary to defend against such a claim.
 - e. The Department's existing policy purports to give finality but is really illusory because closed audit periods may be reopened at any time at the Department's discretion.
 - f. The Department's existing policy could lead to the untimely assessment of alleged royalty underpayments resulting in a substantial interest burden for lessees.
 - g. The Department's policy to avoid closing periods for reasons other than fraud may result in inefficient auditing practices since there will be no incentive to avoid placing emphasis on bygone periods.

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New Orleans, 70139-5001

March 15, 1989

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LEON J. STEVENS JR.
J. ROBERT BYRON JR.
DONALD R. JOHNSON
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FREDERICK W. BRADLEY
ROBERT M. WASSER
S. ERNE PERDUE
THOMAS F. GUSTY
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MARTIN C. HALLIDAY
JOSEPH C. GILLO JR.
BRUCE J. GREGG
PATRICK W. GALT
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JAMES S. HARRISMAN
MICHAEL S. HARRISMAN
WM. BLAKE BERNHART
WILLIAM A. LORIE
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EDNE W. LAFAYETTE
WM. CHARLES WYMAN
JAMES A. BERNHART
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ROBERT L. THOMAS
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ANDREW D. HARRISMAN
MATTHEW S. JOHNSON
MAURICE BRADY STODOL
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STEVEN S. JOHNSON
THOMAS F. GALT
DAVID S. JOHNSON
JOHN S. JOHNSON
HARRY S. JOHNSON
NATHAN F. JOHNSON
PROFESSIONAL CORPORATION
OF LOUISIANA
ROBERT S. SMITH

The Honorable James E. Cason,
Deputy Assistant Secretary
Land & Minerals Management
Department of the Interior
"C" Street between 18th & 19th
Streets, N.W.
Room 6611
Washington, D.C. 20240

VIA FEDERAL EXPRESS

Dear Mr. Cason:

On behalf of the Industry Audit Task Force, and particularly on behalf of the twelve companies that are parties to our December 28, 1988 letter agreement, I would like to express our appreciation for the time and attention that you and others within the Department devoted to listening to the concerns expressed in our meeting with you last Thursday, March 9, 1989. Additionally, I would like to take this opportunity to confirm our understandings regarding the future actions that will be taken by your office. If any of these understandings are incorrect, please let me know as soon as possible.

With regard to the audit closure letters that were recently received by the twelve companies that are parties to the December 28, 1988 letter agreement, you agreed to issue new letters that will supersede the earlier letters and that will track the language of paragraph 6, page 3, of the letter agreement. Specifically, the following language from the prior letters will be deleted:

March 15, 1989

PAGE 2

In situations where subsequent evidence at other companies or facilities indicates the possibility of fraud, collusion, or underpayment, this letter does not preclude further examination of records and transactions of previously audited periods.

Instead, the letters will contain the following language:

This Closure Letter will not affect any right that the government may have to reopen any or all of the pre-September 1980 period in the event the government has reasonable grounds to suspect fraud.

With regard to the general policy statement on audit closure that you issued on December 14, 1988, you asked that we review the policy statement and give you critical comments by March 24, 1989. If we suggest modifying the language of the policy statement, you further asked that we provide you with a rationale for our suggestions, both from the perspective of the MMS and from the perspective of industry. You also stated that you intend to recommend to your successor that regulations be promulgated to govern MMS audits and that these regulations specifically address the issue of audit closure. We greatly appreciate your willingness to consider industry's comments regarding the Department's audit closure policy, and we would welcome the opportunity to assist the Department in any way if a rulemaking effort is undertaken.

With regard to our concerns regarding the expansion of the scope of the audits that we understood were to be defined by the initial document demands, we understand that you will reiterate to the MMS your office's desires (1) that the audits be completed by the target date of September 30, 1989; (2) that the audits be completed "on budget"; and (3) that the audits be of acceptable quality. We also understand that you will obtain from the MMS its assurance that it will use good faith in keeping the sample size of the audits "in the same ballpark" as defined in the original document demands; and, where there is an increase in scope, the MMS will be asked to be cognizant of the reason and justification for the expansion. Finally, we understand that you will ask the MMS to explore its managerial responsibilities in connection with cooperative and delegated audits under the Federal Oil and Gas Royalty Management Act. In this regard, it may be helpful to note that, under Section 301, 30 U.S.C. § 1752, Congress expressly provided that:

March 15, 1989

PAGE 3

In addition to entering into cooperative agreements for delegation of authority authorized under this chapter, the Secretary may contract with such non-Federal Government inspectors, auditors, and other persons as he deems necessary to aid in carrying out his functions under this chapter and its implementation. With regard to his auditing and enforcement functions under this chapter, the Secretary shall coordinate such functions so as to avoid to the maximum extent practicable, subjecting lessees, operators, or other persons to audits or investigations of the same subject matter by more than one auditing or investigating entity at the same time.

(Emphasis added.)

As requested at our meeting, we would greatly appreciate receiving a copy of any policy statements or memoranda issued by your office regarding any of the above-discussed topics. And again, we thank you for the time and attention that you and others within the Department have devoted to these matters.

Very truly yours,

Deborah Bahn Price

Deborah Bahn Price

DBP:kpa

cc: Peter J. Schaumburg, Esq. (via Fed. Exp.)
P. Kevin Colomb, Esq., Amoco Production
Company
J. Stephen Martin, Esq., Anadarko Petroleum
Corporation
Gary Hoff, Esq., Atlantic Richfield Company
Margaret Broussard, Atty., Chevron U.S.A. Inc.
R. Carol Harvey, Atty., Conoco Inc.
Charles Katz, Esq., Exxon Company
Kirby Iler, Esq., Marathon Oil Company
John Quisenberry, Esq., Meridian Oil Company
Robert Luetzgen, Esq., Mobil Exploration &
Producing U.S. Inc.
Patricia A. Patten, Atty., Oxy USA, Inc.
William E. Browning, Esq., Pennzoil Company
Philip C. Wrangle, Esq., Sonat Exploration
Company

Tom Shipp
S. Ute

March 15, 1989

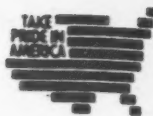
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Company
Dee Richardson, Esq., Union Oil Company of
California
Kerry S. Brittain, Esq., Union Pacific
Resources
Kelly D. Zelikovitz, Atty., Union Texas
Petroleum Corporation
Joseph F. Speelman, Esq., Koch Industries, Ir
Charles Spann, Esq.
Hugh V. Schaefer, Esq.

004453-2



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



Memorandum

MAR 9 1989

To: Director, Minerals Management Service

From: Acting Assistant Secretary - Land and Minerals Management [s] James E. Cason

Subject: Audit Letter Agreement

During a meeting on March 9, 1989, with industry signatories to the audit letter agreement, I was advised that State and Indian auditors working under section 202 and 205 agreements were, in the companies' view, expanding the scope of the audits beyond that agreed to in the audit letter. Specifically, they believe that requests for documents for months and leases not listed in the document requests at issue and which led to the agreement are cause for concern about the Department of Interior's (Department) ability to complete these audits within the agreed upon time frames.

I am also concerned about our ability to complete these audits within the established time frames given our initial audit scope. As a result, I would like for your office to ascertain whether these allegations are correct and, if so, provide a justification for the increase in audit scope.

The Department, through the Minerals Management Service, is responsible for ensuring audits are completed on time and within budget, and are of sufficient quality as to assure audited companies have complied with statutory and regulatory requirements. Thus, any delegation of this responsibility to States, Tribes or contract auditors must be done within the context of available resources and must recognize the Department's commitments--including time frames, settlement agreements, sample sizes and audit standards.

Please provide this office with your response by March 31, 1989.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 30 1989



Memorandum

To: Associate Director for Royalty Management

Through: Director, Minerals Management Service *AP-1*

From: **ACTING** Assistant Secretary - Land and Minerals Management *James E. Casper*

Subject: Modification of Audit Completion and Records Release Letters
Dated January 11, 1989, to 11 Residency Companies

On December 14, 1988, this office issued a policy statement regarding audit closure and records release procedures to be followed at the completion of a company audit. That policy statement generally provided for:

- ° The issuance of a closure letter at the completion of each audit releasing the recordholder from the recordkeeping requirements of Section 103 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA);
- ° The requirement to maintain records related to issues under appeal or litigation; and,
- ° The further examination of records for previously audited periods where subsequent evidence at other companies indicates the possibility of fraud, collusion, or underpayment.

On January 11, 1989, you issued letters to 11 companies releasing them from FOGRMA Section 103 record retention requirements for periods prior to September 1980, except for specifically identified issues under appeal or litigation for each company. In accordance with the Department of the Interior policy, those letters contained the statement:

In situations where subsequent evidence at other companies or facilities indicates the possibility of fraud, collusion, or underpayment, this letter does not preclude further examination of records and transactions of previously audited periods.

On December 28, 1988, the Department entered into an agreement with those same companies including specific record retention requirements for periods prior to September 30, 1980. That agreement states:

The MMS will promptly issue formal closure letters for all periods prior to September 30, 1980, and it will release the companies from any obligation to retain documents pertaining to transactions that occurred prior to that date, with the exception of documents that relate to (a) issues identified with respect to each company on Exhibit A attached hereto and (b) pending administrative or judicial appeals. A formal

closure of pre-September 30, 1980, periods will not affect any right the government may have to reopen any or all of these periods in the event that it has reasonable grounds to suspect fraud.

Since the Department agreed to specific records release language for this period in good faith, it is necessary that your January 11, 1989, letters be modified to reflect the specific terms of the agreement. In the revised letter, the paragraph on page 2 that begins with "In situations . . ." should be replaced with the following paragraph:

This closure letter will not affect any right that the government may have to reopen any or all of the pre-September 1980 period in the event the government has reasonable grounds to suspect fraud.

A cover letter should be sent with the revised letter. It should state that:

The enclosed letter supersedes a letter to you dated January 11, 1989, advising you that the U.S. Department of the Interior has completed audits of your firm's practices and procedures relating to the computation and payment of royalties due on minerals removed from Federal and Indian leases covering the months prior to September 1980. Please follow the terms of the enclosed letter.

The two letters should be sent to the companies as soon as possible.

STRAC

State and Tribal Royalty Auditors Committee

May 12, 1989

Honorable Morris K. Udall
Chairman
Committee on Interior and Insular Affairs
House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Your Committee staff requested that the State and Tribal Royalty Auditors Committee submit a brief written review of recent developments in the administration of FOGPMA, the Federal Oil and Gas Royalty Management Act of 1982, and to include specific examples of the impact of the new oil and gas valuation regulations on revenues to States and Tribes.

Present at the STRAC meeting in Colorado on April 26, 1989 were auditors from California, Colorado, the Jicarilla Apache Tribe, Louisiana, Montana, the Navajo Nation, the Northern Ute Tribe, North Dakota, Oklahoma, the Southern Ute Tribe, Texas, Utah and Wyoming. STRAC delegated the responsibility for preparing this report to the undersigned.

In summary, STRAC's members are concerned about the degree to which policy decisions of the Department of the Interior appear to represent a substantial departure from the Congressional intent set out in Section 2 of FOGPMA, at the expense of the States, the Tribes, and the public interest. The reasons for this conclusion are set out in the balance of this report.

I. "Revenue Neutrality" Calculations

The new oil and gas valuation regulations became effective in 1988, after repeated assurances by the Department of the Interior that they had been designed to achieve "revenue neutrality", which we understand to refer to a goal of neither reducing State and Tribal revenues nor producing a windfall to industry at the public's expense. The Department has proposed additional changes to the new regulations.

Honorable Morris K. Udall
May 12, 1989
Page 2

No significant audits have been completed under the new regulations, and it is thus premature to project with precision what their ultimate public cost will be. However, in response to your staff's request, we have recalculated actual audits initially performed under the old regulations to determine the impact of the new and proposed regulations on specific transactions audited. Our report sets out the conclusions of those calculations; to the extent that the underlying workpapers may contain arguably confidential information, we will cooperate in making them available for the Committee's review under appropriate circumstances.

A. Impact of change in valuation under dual calculation regulations.

Attached as Exhibit A is a report from auditors from the State of California of a unit operated by a major oil company. The unit participants had initially paid royalties of \$3,756,072. The completed audit resulted in findings of royalty underpayments of \$1,843,426.

California's auditors have recalculated the findings which would have been made under the new valuation regulations dealing with dual accounting or accounting for comparison. The result of the new regulatory provisions would have reduced audit findings to \$0 (zero dollars).

Thus, with respect to the new regulations concerning dual accounting or accounting for comparison, these leases would have generated 32.9% fewer royalties to the State and Federal treasuries. This example, of course, deals with a federal onshore lease, where the revenue loss will be divided between the Federal and State treasuries. We point out that the principal dollar amounts of the anticipated loss from this one regulatory change will be for OCS gas, where the revenue loss will be borne by the federal taxpayers alone.

B. Impact of new changes in valuation regulations.

The new regulations were described to be the result of a "compromise" designed to maintain revenue neutrality. As the example above, and the discussion below, suggest, we do not believe that the impact on revenues will be neutral, but rather, negative. However, even if we are in error, and the regulations were neutral, subsequent actions by the Department of the Interior have the effect of destroying whatever pretext of neutrality once existed.

For example, despite the "compromise" reached in the new regulations under which the controversial former treatment of

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"percentage-of-proceeds" ("POP") contracts for processing gas was continued, the Department has now proposed to undo the compromise by valuing royalties on the value of residue gas only.

Attached as Exhibit B is a report by auditors from the State of Utah of a unit operated by a major oil company. Royalties had been paid in the sum of \$3,928,629.83. The audit, which has been completed, resulted in a payment by the company of \$1,085,696.09 in additional royalties. (Payment was also received of an additional \$1,287,450.48 in interest, but that interest is currently under appeal.) Thus total royalties due under the old valuation regulations were \$5,014,325.92. Under the Department's new valuation proposal, royalties would have been reduced to \$0 (zero dollars).

STRAC filed detailed comments on and objections to the POP valuation proposal on January 12, 1989. We have no factual basis for optimism that the Department will respond in agreement with our position.

C. Impact on States and Tribes

Each of the specific audits discussed above was conducted on onshore leases. In its initial "Quarterly Report on Revenue Neutrality" submitted by the MMS to your colleague, Chairman Sidney B. Yates of the Subcommittee on Interior and Related Agencies of the Committee on Appropriations, the only item specifically identified by MMS as potentially increasing any royalty revenues was the new computation method for Outer Continental Shelf processed gas, which generally makes OCS processed gas valued as onshore gas had been valued. That report was dated January, 1989. It was filed after the Department had already proposed its new percentage-of-proceeds valuation method for processed gas discussed above (which will also apply specifically to OCS leases). Thus the only valuation change identified by MMS as having a positive impact on revenues is about to be revoked. In any event, royalties from OCS processed gas are not shared with Tribes, and have represented a relatively small portion of the aggregate royalty revenue to coastal States. Thus it is virtually certain that the new regulations will have a net negative impact on States and Tribes.

In order to keep the length of this report manageable, we have not given specific calculations of other major revenue losses which will arise from both the new regulations and subsequent proposed changes. In particular, the provision for transportation allowances under the new regulations will have a substantial impact on revenues. As to proposals, virtually every controversial element of the "compromise" which led to the new regulations is presently the subject of Departmental reviews for modification at

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the expense of royalty revenues, including pending reviews of valuation impacts of extraordinary costs and post-production allowances. Finally, the Department has recently proposed a dual interest rate provision which will have the effect of forcing States and Tribes to pay for the Department's own failures to process records.

II. Recent "Audit Strategy" Issues

In a series of recent actions, the Department of the Interior has moved to implement a new "audit strategy" which we believe is likely to adversely affect the integrity of the royalty management program and its ability to effectively collect and account for royalties properly due. Our concerns are as much with the process by which the "audit strategy" has been and is being adopted as with its content.

A. Defects in the Policy Making Process

As best we can determine, the principal Departmental decisions which collectively form the new "audit strategy" evolved from discussions and private agreements between the office of the Assistant Secretary for Land and Minerals Management and an ad hoc committee of major oil companies. The States, the Tribes, and, we are informed in some instances, the professional career employees of the Department of the Interior with direct responsibilities for the pertinent functions, were not notified of these developments or consulted on their implications.

The States and Tribes which will bear the financial burden of the new "audit strategy" should have been given the opportunity to provide constructive comments or objection before the decisions were made. In some instances, the policy decisions made privately are inconsistent with the Department's prior public positions.

The private nature of the agreements reached is underscored by their form. One such private agreement, for example, which deals with the so-called "prior period" portion of the audit strategy, was agreed to by the Deputy Assistant Secretary when he signed a document typed on the letter-head of the counsel for the ad hoc committee of major oil companies. That document was then circulated to State and Tribal auditors by the Department to inform us of the new policy.

This process is a departure from the Congressional policies which gave rise to the enactment of FOGSMA. The policies of constructive federal-state partnership and of the fulfillment of trust responsibilities to Indians have been strained by these developments.

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B. Specific Problems with the New "Audit Policy".

The new "audit policy" will have the effect of impairing the system contemplated by FOGRMA by reducing the ability of the Secretary of the Interior to conduct effective audits of mineral royalties by his own auditors and by State and Tribal auditors. This will occur because of the provisions of the new strategy dealing with audit closure, audit cycles, audit scope, record retention, comprehensive company audits, and reliance on private contract auditors.

In the Spring of 1988, MMS finally concluded that it would attempt to perform its audits on a six year audit cycle. As of that time, MMS was unable to actually perform comprehensive audits that quickly, but the six year cycle was adopted as a desirable goal. (In April, 1987, the Director of MMS testified before your Committee that MMS had to complete training its own new auditors before "most" leases could be audited on a six year cycle. In the Spring of 1988, DOI's own Inspector General had concluded that only two percent of the leases held by five companies assigned to MMS's own resident auditors had been comprehensively audited under the then-existing program.) However, by letter of September 30, 1988, to counsel for the ad hoc industry committee, the Assistant Secretary announced that the twelve largest companies (measured by royalties paid) would be audited on a three year audit cycle, and the 220 largest payers would be audited on a five year audit cycle.

Since MMS was not able to perform comprehensive audits of these companies even on a six year cycle, however, the new, tighter policy meant that audit scope, coverage and effectiveness would have to be significantly pared down. Several decisions were then made to reduce audit coverage.

A major decision was made to simply discontinue virtually all audits of the twelve largest companies for all periods prior to September 30, 1980, and to rush through audits of those same companies for the three year period ended September 30, 1983. Those periods, of course, include periods of historically high oil and gas values, and thus might be expected to be deserving of more extensive, rather than abbreviated, audits. This decision is the one referred to earlier, executed on December 30, 1988, by the Deputy Assistant Secretary on the stationery of counsel for the companies. The informal and private nature of that decision came as a particular surprise, since the Department had earlier announced (in a published notice of proposed rulemaking signed by the Deputy Assistant Secretary, 52 Fed. Reg at 30781, see also 53 Fed. Reg at 1237) that any such limitation would be properly included in a formal rulemaking proceeding.

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The States and Tribes have two separate interests in that decision. First, of course, the decision will likely reduce revenues below the amount properly payable under the Mineral Leasing Act. Second, to the extent that State and Tribal auditors participate in the "residency audits" of the twelve largest companies, the accelerated timetable will place most of the States and Tribes in the same position as MMS's own auditors -- they won't be able to conduct comprehensive audits in the limited time now available.

For example, attached as Exhibit C is a report by an auditor for the Southern Ute Indian Tribe illustrating a significant reason why the Department's own procedures are inadequate to enable compliance with the September 30, 1989 cut-off for prior period audits. Under the "Notice to Lessees Numbered 5 Gas Royalty Act of 1987" ("NTL-5 Act"), major portion analyses are required to be performed to established gas valuation. MMS should be performing such an analysis for NTL-5 gas production on Southern Ute lands, but it has not yet been completed. There is no indication that the analysis will be completed prior to September 30, 1989. Virtually all natural gas production from Southern Ute leases is covered under the NTL-5 Act, and at the time the NTL-5 Act was enacted, the Tribe was informed that the analysis would be based on full coverage of its leases. Now the Tribe has been notified by MMS that at most only a sample of Southern Ute leases will be included. Thus it is likely that audit closure this year for prior periods will result in substantial undercollection of royalties due the Tribe, without any opportunity for future audits to reopen the valuation issue.

As a supplement to the new audit cycle policy, on December 14, 1988, the Deputy Assistant Secretary instructed MMS that henceforth audit closures would be effective for all issues (other than those on appeal or in litigation) for the audit period. Previously, MMS practice had followed the GAGAS (Generally Accepted Government Audit Standards, as established by the General Accounting Office) which contemplate leaving specific issues open for future resolution. The December 14, 1988 instruction has the result of foreclosing the prudent practices required by GAGAS. In particular, it will foreclose the ability of States and Tribes to hold open resolution of NTL-5 issues, and to hold open current well-grounded valuation issues pending MMS policy decisions. Thus the audit closure policy may operate to force a loss of potential revenues without the issues ever being resolved.

For example, attached as Exhibit D is a report from Colorado auditors illustrating how the failure of the Department to resolve valuation issues promptly operates to foreclose adequate issue closure. In connection with a mineral audit involving transportation allowances, a determination was requested from MMS

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on June 14, 1985, almost four years ago. No final determination has been made. If Colorado is required to close its audit for all issues by September 30, 1989, it will be foreclosed from ever assuring that proper royalties are collected. Similarly, California auditors have recently obtained evidence that suggests that a major prior valuation decision by MMS was based on materially inaccurate and inadequate factual data. Requiring a closure of all issues on the relevant audit period would operate to almost certainly deprive the Federal and State treasuries of royalties lawfully due.

Additionally, as a result of the policy decisions made in the Office of the Assistant Secretary, the Department is seeking to preclude States and Tribes from selecting a sufficient number of leases and monthly periods for audit. As noted above, the Department's own residency auditors are barely covering two percent of the leases assigned to them at present. The Department is in the process of receiving a study which, we are informed, is expected to support the proposition that even two percent coverage may be excessive. We see it a different way. A goal of achieving less than two percent coverage means that there is a ninety-eight percent chance that non-systemic underpayment or fraud may be undetected by audit.

For example, as Exhibit C indicates, the Department has failed to honor requests from the Southern Ute Indian Tribe for the inclusion of "priority" leases in audits. To the extent that this indicates an inability or unwillingness of the Department to act on the basis of the localized knowledge of State and Tribal auditors, it is a serious defect in the program. To the extent that it indicates systemic weaknesses in the federal-state-tribal partnership contemplated by FOGRMA it deserves significant attention from the Congress.

An essential component of the new "audit strategy" is the instruction that audits be completed in one year. Some audits can be satisfactorily completed in one year. MMS however, estimates that it takes 320 staff days to complete one company audit; we estimate that a comprehensive audit of a large payer company should take from 1.5 to 2 staff years. The existing number of federal, State and Tribal auditors is insufficient to complete comprehensive audits on the three/five year audit cycle if audits are to be completed in a twelve month period.

Finally, in order to meet the three year / five year audit cycle goal promised to the major companies by the Deputy Assistant Secretary, the Department now proposes to turn a significant proportion of the audit responsibilities under FOGRMA over to private auditing firms, under an arrangement which would preclude States and Tribes from auditing certain leases within their own

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jurisdictions. We have high regard for the skills and competence of our professional colleagues in private industry. But we believe that remarkably few of them have adequate background or experience in public royalty auditing, and those that do appear to be disqualified by conflicts of interest from auditing industry on behalf of the public. There are significant differences between public auditing for compliance and enforcement purposes and private financial statement auditing for opinion purposes. In particular, audit teams from national accounting firms lack the detailed knowledge possessed by State and Tribal auditors of the impact of localized industry practices and local tax and regulatory requirements on royalties. Lack of relevant experience is a substantial handicap in auditing royalties -- as the Department's own unfortunate experience in using private accounting firms during the period of IG "look back" audits made clear.

For example, attached as Exhibits E and F are letters from North Dakota and Wyoming auditors describing the results of their reviews of IG "look back" audits performed by Big 8 accounting firms under contract with the Department. North Dakota auditors reviewed the contractor's findings for eight leases. The Big 8 contractor found \$380,735 in royalty underpayments. However, on review by State auditors, actual royalty underpayments were found to be \$1,344,181, i.e., the contract auditors missed 71.68% of the underpayments. All of the North Dakota state auditor's findings have been approved by MMS through the issuance of demand letters.

The Wyoming auditors conducted an audit on a single lease overlapping a Big 8 contractor's audit for an IG "look back." The contractor had identified only \$316 in royalty underpayments. The Wyoming State auditors found that the contractor had failed to identify pertinent valuation issues, including for example tax reimbursements, ad valorem taxes, sweetening fees, and a single month's valuation error of \$159,208.19 in royalty underpayments.

On balance, we believe that the new "audit strategy" is driven by the decision to relieve industry from the six year audit cycles contemplated by FOGRMA, at the taxpayer's expense, without due sensitivity to the public interest in effective enforcement of the statutes.

STRAC fully supports the concept of prompt and adequate audit procedures designed to finally resolve audit issues and periods in a fair, lawful and speedy manner. STRAC and its members have made proposals to the Department over the years with that goal in mind. While the new "audit strategy" pays lip service to the notion of prompt audits, it sacrifices all the other considerations of effectiveness, efficiency and completeness set out in FOGRMA.

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STRAC and its individual members have discussed many of these problems with Departmental officials. Lower-level MMS staff have indicated both an understanding of many of the problems and a willingness to try to resolve certain specific issues on a cooperative basis. However, Departmental policy is set in Washington and has, so far, been unresponsive.

III. State and Tribal Program Funding

The Congress explicitly stated that one purpose of FOGRMA was "to effectively utilize the capacities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system." As discussed above, the failure of the Department to give States and Tribes notice and opportunity to comment on policy matters is inconsistent with the Secretary's obligation to use our services in helping to develop an effective system. When it comes to utilizing our services to maintain an efficient and effective system, the Department operates through delegation and cooperative contracts with States and Tribes. Funding for those programs is currently projected to remain level, although additional States and Tribes are seeking to enter the program, and additional responsibilities are being placed on us. For example, as Exhibit G indicates, additional audit activity required by the NTL-5 Act will have to be funded out of the existing audit budget, thus reducing Colorado's ability to meet its normal obligations for the current year.

We believe that the Department would be better advised to apply more resources to fund State and Tribal auditing programs. These programs have been effective in supporting the integrity of the royalty management program, and operate, we hope, as a useful public check on Departmental performance. We recognize that there are federal budgetary constraints, but suggest that the small portion of the Department's budget represented by State and Tribal auditing programs buys very substantial benefits to the public.

For example, figures supplied to us by MMS indicate that the total budget for contract billings for State and Tribal audit programs for the period July 1985 through June 1988 was \$5,674,460. During the same period, final royalty underpayment findings (i.e., the total of actual collections on issue letters plus MMS approved demand letters) totalled \$44,168,133, for a cost-benefit ratio to date of 7.78. These figures significantly understate the ultimate value of State and Tribal audit programs, in that they do not include the large volume of issue letters for which demands have not yet been sent, and ongoing audits.

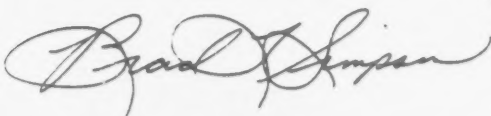
We were asked to present a brief report and have thus necessarily omitted considerable detail from this document. We

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would be pleased, individually or collectively through STRAC, to provide whatever further information you may request.

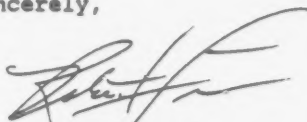
In closing, we would be remiss if we did not express our repeated thanks to you and to your Committee for the enlightened leadership you have shown in this area. FOGRMA was enacted as a model of federalism, fiscal prudence, and fairness. We ask for your help in maintaining this program as you intended it to operate.

Sincerely,



Brad L. Simpson
Chairman, STRAC July '89
Meeting
Utah State Tax Commission
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Honorable Don Young
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Records show Cason helped to limit audits of federal royalties

8-27-87

By ANDREW MELNYKOVICH, Star-Tribune Washington Bureau

WASHINGTON — A top Interior Department official earlier this year moved to end industry efforts to limit audits of federal oil and gas royalty payments.

Acting on a request by major petroleum producers, James Cason directed the Minerals Management Service to investigate complaints that auditors for states and Indian tribes were trying to audit more leases than allowed by an agreement Cason had made with the companies.

The letter indicates that the industry expected Cason to more tightly control state and tribal audits.

In a March 23 memorandum to the MMS director, Cason, acting assistant interior secretary for land

and minerals management, says that the oil companies believed that "state and Indian auditors ... were ... expanding the scope of audits beyond those agreed to."

"I would like your office to ascertain whether these allegations are correct and, if so, provide a justification for the increase in audit scope," Cason wrote to then-MMS Director Robert Kalman. Cason asked MMS to give him a answer by March 31.

Cason last year signed an agreement with the 12 largest producers of oil and gas from federal lands. The Dec. 28 pact set the terms for all audits of oil and gas royalty payments due prior to Sept. 30, 1991.

MMS spokesman Susan Hall said that the only conflicts over the scope of audit involved two Indian

Please see CASON, A16

Cason

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tribes. The MMS told Cason that the problems would be resolved by the tribes, the MMS and the oil companies involved, Hall said.

Cason's memo was written a week after he received a letter from Deborah Bahn Price, a New Mexican lawyer representing the Industry Audit Task Force, which includes the 12 major oil companies. Price's letter followed a March 9 meeting of the industry group and Cason.

Price's letter reminds Cason that he had promised during the meeting to obtain from MMS its assurance that it will use good faith in keeping the sample size of the audits in the same ballpark as defined by the Dec. 28 agreement and "where there is an increase in scope, the MMS will be asked to be cognizant of the reason and justification for the expansion."

The Star-Tribune obtained Cason's memo and Price's letter from the Interior Department by making a request under the Freedom of Information Act. Cason has declined repeated requests for interviews.

State and tribal auditors have described the Dec. 28 agreement as a unilateral revision of an audit strategy agreed to by the MMS, the states and the tribes earlier in 1988. Cason did not consult with the states and tribes before making the deal with oil companies, the auditors say.

Cason has been nominated by President Bush to become assistant agriculture secretary with responsibilities for the Forest Service, but the Senate has yet to hold hearings on the nomination. Wyoming Republican Sen. Malcolm Wallop and Al Simpson have endorsed Cason.

Wyoming is one of several states that conducts its own audits of federal leases within its borders, as do the tribes on the state's Wind River

Indian Reservation. The state and tribal auditors operate under agreements with the MMS, and are bound by federal rules and policy decisions.

States receive half the federal royalties collected within their borders, while Indian tribes receive all royalty revenue from their lands. Wyoming is the single largest recipient of federal mineral royalty revenue, receiving about \$200 million annually in recent years.

In April 1988, the states and tribes agreed with MMS on an audit strategy aimed at clearing a massive backlog of audits and putting the royalty collection system on a more up-to-date basis. The petroleum industry objected, saying the plan would require keeping records for longer than the six years mandated by law.

Cason, then deputy assistant interior secretary for lands and minerals management, and MMS officials met several times with the industry group to discuss the new audit policy. Those meetings produced the changes embodied in the Dec. 28 agreement, including restrictions on the scope of audits and the time allowed for their completion.

The March 9 meeting apparently focused on industry complaints regarding the implementation of the Dec. 28 agreement. Price has declined to comment on any matters relating to the Industry Audit Task Force. But her letter to Cason deals largely with industry "concerns" related to the agreement — concerns Cason evidently promised to address.

"I would like to take this opportunity to confirm our understandings regarding the future actions that will be taken on your office," Price says.

One of the "concerns" expressed by the industry group was "the ex-

pansion of the scope of the audits that we understood were to be defined" by MMS requests sent to the oil companies in September of last year. The requests ordered audits of the period from Oct. 1, 1981, to Sept. 30, 1983.

In addition to keeping the scope of the audits "in the same ballpark," Price says the industry group understands that Cason will reiterate to the MMS "your office's desire (1) that the audits be completed by the target date of September 30, 1989; (2) that the audits be completed on budget; and (3) that the audits be of acceptable quality."

Price also indicates that Cason agreed to ask the MMS to keep state and tribal auditors under tighter control.

We understand that you will ask the MMS to explore its managerial responsibilities in connection with cooperative (tribal) and segregated (state) audits" under the Federal Oil and Gas Royalties Management Act, Price says.

Supporting that request, Price quotes a "helpful" excerpt from the law, underlining a passage that says, in part, that the Interior Secretary will work "to avoid to the maximum extent possible, subjecting lessees, operators, or other persons to audits or investigations of the same subject matter by more than one auditing or investigating entity at the same time."

Cason's March 23 memo reminds the MMS that it is responsible for "ensuring that audits are completed on time and within budget, and are of sufficient quality as to assure audited companies have complied with statutory and regulatory requirements." Audits performed by states or tribes must meet the same standards, he says.

Neither Price's letter nor Cason's

memo specified which states or tribes were the focus of disputes over the scope of audits. MMS spokesman Hall says the agency's own review turned up problems with only two Indian tribes, and no states. The agency did not respond to Cason's writing, he said.

Hall did not say which tribes were involved. The Star-Tribune found that the Southern Ute tribe and the Navajo nation both asked MMS for expanded audits of their oil and gas leases.

Navajo auditor Perry Shippy said he never received any complaints directly from the oil and gas companies, but speculated that the complaints could have been the result of the Navajo asking the MMS to conduct more audits on the tribe's behalf. Shippy said he has not yet been told by the MMS whether the additional audits will be performed.

Southern Ute lawyer Tom Shippy said the tribe was concerned that the audits MMS proposed under the revised audit plan would be inadequate to protect the tribe's interests. The tribe filed an administrative appeal asking for a return to the April 1988 audit plan, he said.

The dispute was finally resolved last month, and the appeal was withdrawn, Shippy said. But it remains to be seen whether the tension between the industry and the states and tribes is going to be relaxed, he said.

The MMS and new Director Barry Williamson need to be credited with trying to correct some prior mistakes, Shippy said. Unfortunately he had to go through all those

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Washington - In many of

...state and Indian tribes for making policy decisions after private deals with the oil and gas industry. Williamson was appointed by

...people, of dealing with our constituents," Williamson said. "The new administration has come in with a little different approach in trying to improve on an already

side. Wyoming is the single largest recipient of federal mineral royalty revenue, receiving about \$50 million annually in recent years.

in April 1998, the states and cities instead with efforts on an audit strategy aimed at clearing a narrative backlog of media and putting the liability collection system on a more up-to-date basis. The petroleum

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Sept. 30, 1969, as the
date for completion of all

fraud, collusion, or understatement," significantly broader grounds than the fraud-only exception.

"We're very cognizant of that [dissemination]," Williamson said.

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"We're developing the best ap-

needed to be more involved in the process," Williamson said. "I

EDITORIAL

9-17-89 Casper Star Tribune

Cason: a poor choice
to run national forests

Minerals Management choice better

For as long as we can remember, Wyoming politicians, including our current U.S. senators, have been complaining about the Washington bureaucrats who make decisions affecting our state.

The bureaucrats and the decisions may change, but the complaint is often the same. Nobody asked us. Nobody even bothered to tell us.

In the coming weeks, Sens. Al Simpson and Malcolm Wallop will have an opportunity to strike a blow against such executive high-handedness. All they need do is to withdraw their support of President Bush's nomination of James Cason to be assistant agriculture secretary for natural resources, a job that would place him in charge of the Forest Service and the Soil Conservation Service.

Cason, a protégé of former Interior Secretary James Watt, is opposed by the major conservation groups. We are not in a position to judge the merits of the allegations they have made regarding his record at the Interior Department in handling matters not directly related to Wyoming.

However, we are familiar with Cason's handling of a matter of considerable importance to our state—the auditing of royalties paid on oil and gas produced from federal and Indian leases. Wyoming's share of those royalties runs into the tens of millions of dollars each year.

Under an agreement with the federal government, Wyoming auditors are responsible for reviewing a substantial portion of the federal leases within the state. Since 1981, their work has uncovered about \$70 million in underpayments.

In contrast to the job done by Wyoming's auditors, the federal auditing program has been in disarray. Only a small portion of leases are reviewed, and there is an enormous backlog of unaudited leases, with untold millions in underpayments awaiting discovery.

Last year, the federal Minerals Management Service met with representatives of the states and tribes that conduct their own audits. Together, they mapped out a strategy for doing a more efficient and thorough job of collecting the money that is due states, tribes and the federal government.

The petroleum industry objected to the new audit strategy. They took their complaints directly to Cason. After a series of meetings to which the states and tribes were not invited, Cason and the industry came up with their own audit plan.

On Dec. 28, 1988—three weeks before the Reagan administration ended—Cason signed an agreement with 12 major oil companies, severely limiting the ability of the MMS, the states, and the tribes to recover unpaid royalties due before Oct. 1, 1983. The period includes the last boom of high prices and high production.

It wasn't until three months after Cason signed the deal that the states and tribes learned that their hands had been tied. And it wasn't until a month later that the entire sorry business became public. Once it did, Cason told Gov. Mike Sulli-

van, among others, that the controversy was merely a case of "miscommunication" with the states and tribes.

There was no miscommunication. There was no communication at all.

Once they found out about it, the states and tribes understood very well the implications of Cason's back-room deal with industry. Had they known in advance what Cason was up to, the states and tribes never would have gone along with the unilateral revision of the policy they had helped craft.

In fact, the only way Cason could have sneaked the deal by the states and tribes was by keeping them in the dark. His was a course of deliberate non-communication with the people most directly affected by his decision.

Cason's conduct raises serious questions about the way he would oversee the millions of acres of national forest in Wyoming and the valuable resources they contain. National forest management is fraught with controversy. It requires an ability to produce balanced decisions that are the product of careful consultation with all concerned.

We are not convinced that Cason is willing to listen to all sides of an issue. We are not confident of his ability to handle difficult policy questions in an open and evenhanded manner. In short, we do not believe he should hold one of the nation's most important land management jobs.

We urge Sens. Simpson and Wallop, who rushed to endorse Cason, to rethink their positions.

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In sharp contrast to Cason's actions on oil and gas audits is the approach taken by new Minerals Management Service Director Barry Williamson.

Williamson took office just as the audit controversy was becoming public. His first response was to defer action on several of Cason's directives until the state and tribal auditors could be consulted. Williamson has met several times with the auditors as a group, and also has sought out their individual views. He has met as well with representatives of the petroleum industry.

After ascertaining the facts and gathering the opinions of all concerned, Williamson earlier this month announced a number of what he diplomatically termed policy "clarifications." In reality, what Williamson did was scrap or substantially revise the key elements of Cason's deal with industry. The state and tribal auditors said they were generally satisfied with Williamson's actions.

Even more pleasing to the state and tribal officials was the way Williamson reached his decisions. No previous MMS director had ever bothered to call and ask for an their opinions, several auditors said.

Williamson appears committed to running the MMS in an open and above-board manner. He brings a much-needed infusion of credibility to an agency that, while only eight years old, has a lengthy list of missteps, blunders, and outright fiascos to its discredit.

The CHAIRMAN. Again, like the two earlier witnesses, Mr. Hair, you have anticipated my questions. I was going to ask you how many times you had opposed nominees, and you said one.

I understand also, not only from what you have said here, but from reading your testimony and the attached material, your reasons for opposing the confirmation of Mr. Cason. I thank you for being here, sir.

Mr. HAIR. Thank you. Could I make one comment to follow on that, sir?

The CHAIRMAN. Sure.

Mr. HAIR. We really feel that we have been through 8 difficult years with the previous administration on these important issues. At this juncture, the institution, and particularly the U.S. Forest Service, needs support of the conservation community. It does not need continued antagonism.

Mr. Cason being in that critical spot as Assistant Secretary is simply going to continue to polarize what are now some critical issues that I think we must find consensus over.

I commend you, sir, for your diligent actions on this particular issue, but also on larger issues of national forest planning. I appreciate being here. Thank you.

The CHAIRMAN. Thank you for saying that, and quite apart from Mr. Cason's nomination, I absolutely agree with you. The near battle ground or siege mentality that has grown up in the forestry area is not doing anybody any good.

I know so many very dedicated, good men and women within the Forest Service and among the people who use the National Forest System, all the way across the spectrum. It seems a shame to see this polarization that is going on, and we have to find ways to bring people back together.

I am hoping that in a series of hearings that we will eventually have here might start that process. I also realize that that is part of the concern being expressed in this nomination.

Thank you very much.

Mr. HAIR. Thank you, sir.

The CHAIRMAN. Mr. Cutler, president of Defenders of Wildlife, again no stranger to us here in this room. It is good to have you here.

Mr. CUTLER. Thank you, Mr. Chairman.

This morning, with Max Peterson, you were recalling some earlier events in this room, and I recall when Chairman Talmadge used to sit where you sit and the witness used to sit at the Chairman's right hand. Do you remember Carol Tucker Forman, the former Assistant Secretary for Food and Consumer Services?

The CHAIRMAN. I know Ms. Forman very well.

Mr. CUTLER. Do you remember when she stepped in the Chairman's spittoon?

The CHAIRMAN. I had forgotten that, but I will certainly make it a point to remind Carol.

On my time and not on yours, I will recount a story of when I was first sitting where you are. The Chairman and the distinguished then-Chairman of the Judiciary Committee, now deceased, Senator Eastland were here and we had been going all the way around. Senator Eastland had proposed an amendment which

Courtney Page, his administrative assistant handed him. Senator Eastland looked almost surprised saying, "oh yes, I do have an amendment, and hands this thick amendment over to Senator Talmadge, who immediately accepted it.

I had the temerity, from the end of the table, to ask if I could just have some indication of what was in this amendment that we had just accepted, and realized that that was not a normal question to be asked by the newest member of the committee. That was a matter I have never forgotten, even though it was 15 years ago.

So now on your time, Mr. Cutler, go ahead, please.

STATEMENT OF M. RUPERT CUTLER, PRESIDENT, DEFENDERS OF WILDLIFE, WASHINGTON, DC

Mr. CUTLER. I am M. Rupert Cutler, president of Defenders of Wildlife.

STRONGLY URGE THE COMMITTEE TO REJECT THIS NOMINEE

I will get right to the "bottom line" of my testimony, which is to strongly urge the committee to *reject* this nominee, Mr. Cason, and to ask the President to nominate another, more qualified individual—a proven conservationist—to lead this Nation's Federal forest conservation and soil conservation programs. In our opinion, Mr. Chairman, Mr. Cason is no conservationist.

As a matter of fact, it is really strange that we have this need to oppose, given the fact that the Bush administration has indeed appointed some bona fide conservationists to similarly high level posts in this administration. Bill Reilly at EPA, Mike Deland at CEQ, John Turner at Fish and Wildlife Service represent the kind of appointees we applaud, and I have published an editorial in "Defenders" magazine to the effect that we are encouraged by those appointments. But we do not see that kind of environmental sensitivity in this nominee.

DEFENDERS OF WILDLIFE

The organization I represent, Defenders of Wildlife, is a private, nonprofit, national conservation organization of 80,000 members and supporters. For 42 years, we have campaigned for the preservation of the natural abundance and diversity of our native wildlife and its habitat.

Defenders has worked for many years to *increase* the protection given wildlife and its habitat on public lands by Federal land management agencies including the Forest Service.

DEFENDERS FEARS

Based on his record at the Department of the Interior, Defenders fears that if Mr. Cason is confirmed as chief policymaker for the Forest Service the *opposite* trend will soon be apparent: *lessened* attention to the welfare of wildlife and to the protection of intact, well-functioning ecosystems on which the survival of wildlife depends.

PERSONAL BACKGROUND

I am a wildlife biologist who has served on the executive staffs of several public and private wildlife conservation agencies and organizations. After earning my Ph.D. at Michigan State University, I taught environmental policy courses there for several years. Then, as you know—because I was the subject of an identical confirmation hearing by this committee 12 years ago—I served as the Assistant Secretary of Agriculture for Conservation, Research and Education and later as Assistant Secretary for Natural Resources and Environment during the Carter administration. So my testimony today has a personal aspect to it that may be a little different from the other testimony that you are hearing.

In fact, I was the *first* Assistant Secretary of Agriculture for Natural Resources and Environment. I recommended creation of the post and I was the first incumbent.

In those capacities and with Secretary Bob Bergland's strong support, I advocated and oversaw the adoption of a long series of policy changes at the Department of Agriculture designed to make the impact of the Department's programs on the environment positive rather than negative.

By the time I left the Department, I had assembled a 4 inch thick binder containing copies of all the new laws, Executive Orders, and Secretary's Policy Memoranda adopted during the Carter administration, the initiative for which came from my "shop" in Agriculture. My purpose for bringing up this compilation is to remind the committee of the breadth of concerns in which this Assistant Secretary's Office is involved—and to encourage each member of the committee to ask: "Where would Jim Cason come down?" in each of the sensitive environmental policy issues covered in that collection of policy documents. They include:

INTEGRATED PEST MANAGEMENT

Would Jim Cason advocate the search for and use of *alternatives* to chemical pesticides whenever possible, and call for the cessation of the use of the Agent Orange ingredient, 2,4,5-T, on the national forests, as we did?

THE USDA OFFICE OF ENVIRONMENTAL QUALITY

Would Jim Cason re-establish that in-house environmental quality staff to monitor the Department's performance with regard to NEPA, water quality and these sorts of things, a staff Secretary Bergland established and his successors demolished?

SCS STREAM CHANNELIZATION

Would Jim Cason order Soil Conservation Service engineers to cease and desist with respect to converting free-flowing streams to drainage ditches? We did.

WILDERNESS

Secretary Bergland and I recommended 6 million acres of wilderness in Alaska. After the completion of RARE II, the Roadless Areas Review Evaluation, we recommended a doubling in size of

the National Forest System component of the wilderness system. How would Jim Cason react to either Forest Service or private citizen group recommendations to further enlarge the wilderness system? Defenders thinks it should be doubled.

PUBLIC RANGELAND

Secretary Bergland adopted a policy ordering USDA agencies to manage the public rangelands for all resources, including wildlife and recreation, not just on behalf of the livestock permittees. Could Jim Cason do this?

OFF-ROAD VEHICLES

The integrity of ecosystems has to come first, before the pleas of off-road vehicle users, on our public lands. Where would Jim Cason come down in a contest of wills between conservationists and motorcycle and four-wheel-drive enthusiasts?

ANIMAL DAMAGE CONTROL

We supported *nonlethal* control measures. Would Cason?

CULTURAL RESOURCES

Would he protect Indian artifacts as we attempted to do?

THREATENED AND ENDANGERED SPECIES

Our policy was to improve the status of threatened or endangered species. It is hard for me to see Jim Cason enthusiastically carrying out that policy, given his resistance to the listing of the spotted owl.

WETLANDS, FLOOD PLAINS, PRIME FARMLAND

We adopted policies prohibiting the use of USDA resources to convert wetlands, flood plains and prime farmland. Where would Jim Cason come out on those, given his ties to the development industry?

DIFFICULT POLICY DECISIONS

These are the kinds of difficult policy decisions an appointee to the Department of Agriculture's top conservation post must make. I do not see in Jim Cason's résumé, or in the accounts of his performance at Interior, evidence of the experience and knowledge base needed to make them, or evidence that his personal value system includes a concern for the well-being of the biosphere.

CONCLUSION

In conclusion, Mr. Chairman, Mr. Cason has failed to prove himself an advocate of the increasingly urgent need to provide more effective stewardship of dwindling fish and wildlife resources on the public lands. Such an advocate is needed in the Office of the Assistant Secretary of Agriculture for Natural Resources and Envi-

ronment, to ensure that our rich legacy of diverse native plants and animals survives to be enjoyed by future generations of Americans.

Thank you very much.

[The prepared statement of Mr. Cutler follows:]

Defenders

OF WILDLIFE

TESTIMONY OF
M. RUPERT CUTLER, PH.D.
PRESIDENT, DEFENDERS OF WILDLIFE
BEFORE THE COMMITTEE ON AGRICULTURE, NUTRITION AND
FORESTRY
U.S. SENATE
AT A CONFIRMATION HEARING ON THE
NOMINATION OF JAMES E. CASON
TO THE POST OF ASSISTANT SECRETARY OF AGRICULTURE
FOR NATURAL RESOURCES AND THE ENVIRONMENT
Final Version as Read
OCTOBER 4, 1989

Chairman Leahy and members of the committee,
I am M. Rupert Cutler, President of Defenders of
Wildlife.

I appreciate this opportunity to serve as a
nongovernment witness at this hearing of the Com-
mittee on Agriculture, Nutrition and Forestry,
called to consider whether or not the committee
will consent to the President's nomination of
James E. Cason to the post of Assistant Secretary
of Agriculture for Natural Resources and the En-
vironment.

The "bottom line" of my testimony is to
strongly urge the committee to reject this nominee
and to ask the President to nominate another, more
qualified individual--a proven conservationist--to
lead this Nation's federal forest conservation and
soil conservation programs. In our opinion, Mr.
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Defenders OF WILDLIFE

Based on his record at the Department of the Interior, Defenders fears that if Mr. Cason is confirmed as chief policymaker for the Forest Service the opposite trend will soon be evident: lessened attention to the welfare of wildlife and to the protection of intact, well-functioning ecosystems on which the survival of wildlife depends.

I am a wildlife biologist who has served on the executive staffs of several public and private wildlife conservation agencies and organizations. After earning my Ph.D. at Michigan State University, I taught environmental policy courses there for several years. Then, as you know--because I was the subject of an identical confirmation hearing by this committee 12 years ago--I served as Assistant Secretary of Agriculture for Conservation, Research and Education and later as Assistant Secretary for Natural Resources and Environment during the Carter Administration.

In fact, I was the first Assistant Secretary of Agriculture for Natural Resources and Environment. I recommended creation of the position and was the first incumbent.

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- Integrated pest management. Would Jim Cason advocate the search for and use of alternatives to chemical pesticides whenever possible, and call for an end to the use of the Agent Orange ingredient, 2,4,5-T, on the National Forests, as I did?

Defenders OF WILDLIFE

• **USDA Office of Environmental Quality.** Would Jim Cason support the re-creation of the Agriculture Department's in-house environmental quality staff to monitor the Department's performance under the National Environmental Policy Act, the Clean Water Act and similar statutes--a staff Secretary Bergland appointed . . . and Secretary Block disbanded?

• **SCS stream channelization.** Would Jim Cason order Soil Conservation Service engineers--through binding federal regulations on channel modification--not to destroy wildlife-rich free-flowing streams by converting them to drainage ditches? We did.

• **Wilderness.** Secretary Bergland and I recommended in the context of congressional consideration of the Alaska National Interest Lands Act that six million acres of the National Forests in Alaska be protected within the National Wilderness Preservation System, and later, upon the completion of RARE II (the Roadless Areas Review and Evaluation), recommended a doubling in size of the National Forest System component of the wilderness system nationwide. How would Jim Cason react to either Forest Service or private citizen group recommendations to further enlarge the wilderness system? (Defenders believes the wilderness system ought to be twice its present size.)

• **Public rangeland.** Secretary Bergland adopted a policy ordering USDA agencies to manage the public rangelands for which they were responsible for all resources and values including wildlife and recreation, not just on behalf of the livestock-ranching permittees. Could Jim Cason do this in view of his support from the livestock industry?

• **Off-road vehicles.** The integrity of ecosystems has to come first, before the pleas of off-road vehicle users, on our public lands. That's the position we took in the Carter administration; where would Jim Cason come down in a contest of wills between conservationists and motorcycle and four-wheel-drive enthusiasts?

• **Animal damage control.** The Carter Administration supported nonlethal control measures; would Jim Cason?

• **Cultural resources.** We required USDA agencies to take special pains to avoid the loss of ancient Native American village sites and ar-

Defenders OF WILDLIFE

tifacts, as they went about clearing land and cutting trees; could Jim Cason relate to this concern?

- Threatened and endangered species. In a special Secretary's Memorandum entitled "Policy on Fish and Wildlife," Secretary Bergland ordered USDA agencies to "promote and conduct its activities and programs in a manner that will improve the status of threatened or endangered species." It's hard for me to see Jim Cason enthusiastically carrying out that policy, given his resistance to the listing of the spotted owl.

- Wetlands, flood plains, prime farmland. Secretary Bergland signed memoranda prohibiting USDA from assisting with land development projects that would adversely affect wildlife-rich wetlands and floodplains or pave over prime farmland. Do you think Jim Cason would ignore the wishes of his development friends and support such policies? I doubt it.

These are the kinds of difficult policy decisions an appointee to the Department of Agriculture's top conservation position is called upon to make . . . and I don't see in Jim Cason's resume or in the accounts of his performance at Interior evidence of the experience and knowledge base needed to make them . . . or evidence that his personal value system includes a concern for the well-being of the biosphere.

In fact, during Mr. Cason's period of service with the Bureau of Land Management, he has expressed distrust of biologists and displeasure with their recommendations.

In 1982, at the beginning of Mr. Cason's involvement with the BLM, that agency employed 379 fisheries and wildlife biologists. By 1987, there were only 242. Although the number of BLM biologists increased to 277 last year, this is still a 27 percent drop from 1982--at a time when more and more wildlife species on the public lands are in drastic decline.

The spotted owl is one often-remarked example. While this rare species continues to decline, Mr. Cason has confirmed that he objected to a 1986 report by departmental biologists that logging in the Pacific Northwest was jeopardizing the owls' survival. He ordered the report buried and conducted a "witch-hunt" to find out who had leaked the information contained in the report.

Defenders OF WILDLIFE

During that same time period, from 1982 to 1988, the level of appropriations for Forest Service fish and wildlife programs increased dramatically, while BLM fish and wildlife appropriations increased only modestly, not enough in most of the intervening years even to compensate for inflation. BLM appropriations of about \$14 million in 1982 rose to \$15 million in 1983 and then declined in constant dollars adjusted to the 1982 base, only regaining an adjusted value of \$15 million in 1988.

Mr. Cason has failed to prove himself an advocate of the increasingly urgent need to provide more effective stewardship of dwindling fish and wildlife resources on the public lands. Such an advocate is needed in the office of the Assistant Secretary of Agriculture for Natural Resources and Environment to assure that our rich legacy of diverse native plants and animals survives to be enjoyed by future generations of Americans.

Thank you for the opportunity to offer these comments for your consideration.

The CHAIRMAN. Thank you very much. I appreciate it.

Again, as the four witnesses ahead of you, you have anticipated my questions. It is good to see you again. I thank you for coming here.

I think your firsthand knowledge gives you a chance to speak on the subject in a way that others might not. I appreciate your being here.

Our next witness is David Harrison. Mr. Harrison is senior policy advisor for the Council of Energy Resource Tribes from Denver, Colorado.

Before you start, so I will have it on my record, there was a question here, Mr. Harrison. Your statement said you were speaking for 43 of the Indian tribes. Was that a decision made in the meeting of all the tribes, or was it a decision of the executive board?

Mr. HARRISON. The executive board is the chief elected official of the member tribes and this issue had been discussed at their meetings. Not all of the members tribes have had the personal meetings with Mr. Cason that the actively mineral producing tribes have, but those who have had that personal exposure to him, after expressing their views were——

The CHAIRMAN. Of the 43 tribes, how many have representatives on the executive board?

Mr. HARRISON. The board of directors of a 43 member board, the chief principal executive officer of each tribe.

The CHAIRMAN. That is what voted, the 43 of them voted?

Mr. HARRISON. I think there were only 27 at the meeting. We do not always have 100 percent attendance at the board meetings.

The CHAIRMAN. Thank you. Go ahead.

**STATEMENT OF DAVID C. HARRISON, SENIOR POLICY ADVISOR,
COUNCIL OF ENERGY RESOURCE TRIBES, DENVER, CO**

Mr. HARRISON. I have been very impressed this morning, Mr. Chairman, with the degree of mastery that this committee has obviously shown over a number of issues in the Interior Department, that we have wrestled with them for many years and are also not convinced that they have mastered them.

I would like to point out that much of what we have heard and much of the allusions to the previous administration that we have heard today and read in the press regarding Mr. Cason's nomination, we absolutely and fully agree with. As one of the previous witnesses just said, we too feel like we have come through a long and dark 8 years on a number of issues with the Interior Department over the previous administration.

**WE HAVE FOUND JIM CASON TO BE A SINGULAR AND BRIGHT LIGHT
EXCEPTION IN THE PREVIOUS ADMINISTRATIONS**

The point we would like to make here, and one that we feel obviously strongly enough about to make this appearance, even in the face of recommendations of some of our colleagues in the environmental community, is that in our experience we have found Jim Cason to be a singular and bright light exception in the previous administrations.

OFFER A LITTLE BALANCE TO SOME OF THE THINGS WE HAVE HEARD

I would like to take an opportunity to try to offer a little balance to some of the things we have heard. For instance, when we first met Mr. Cason, we had been taking vigorous issue for a number of years with a whole host of mineral management issues over there. We, too, were inclined to believe that that Department and that administration had virtually given the store away to the oil and gas industry in particular.

However, when we got to Jim Cason, and he sat down to talk with us, we began, we believe, to make an impression on him with regard to a number of issues that he had not been—in our view—faithfully advised of by his own professional staff over there.

A MAJOR ISSUE WITH REGARD TO ACCOUNTING FOR NATURAL GAS

As an example, there was a major issue with regard to accounting for natural gas during the years of 1982 to 1986. We met many times with members of the industry, with members of the Department's agencies, and finally with Mr. Cason himself. We were finally able to work out a compromise acceptable to us, the Indian mineral owners, who had tens of millions of dollars at stake, and that Mr. Cason was willing, and he realized, needed legislation to implement.

He was willing to come with us to the Congress to get that legislation, to implement that compromise in the face of vigorous opposition right up to the very moment it passed both Houses of the Congress. Some of the people we do business with, among the major oil companies, told us quite cheerfully and candidly that their orders were to kill the bill, and they made every effort to do that.

But Jim Cason stood with us, the Indian mineral owners on that and we believe the Federal Treasury profited rather handsomely as well.

WITH REGARD TO THE REGULATIONS

With regard to the regulations, there were what the administration called conclusive presumptions in many cases, in favor of the industry. As a result of our discussions with Jim Cason, he began to realize that some of those conclusive presumptions were probably not warranted. He changed the rules, not only with regard to Indian production, but he went back to his agencies and said if what these Indians are telling me makes sense with regard to their deals, why are we doing any less for the Federal properties?

As a result, in several instances, those rules were changed for both Federal and Indian properties, again with the result that we expect that we will realize several millions of dollars that we would not have otherwise.

He agreed, in the final regulations, to reverse his agencies with regard to insisting that even in arm's length contract transactions, that the Department and the Indian tribes and the State auditors reserve the right to look behind even those transactions, because there is an implied duty on the part of our industry operators out there not only to produce in a workmanlike fashion, but to market that production for our benefit as well as theirs.

That was an element that had been left completely out, that the industry opposed vigorously, but nevertheless found its way into the final regulations after he got involved in them.

He also, over the objections of the industry, put language in the regulations that said with regard to Indian properties in particular, any language of an Indian statute or treaty or in our own contractual agreements, will supersede those regulations to the extent of any inconsistencies in them, again a measure that was greatly resisted by the industry.

REMARKS CONCERNING JIM CASON

So in all of this, it did not come easily. Jim Cason, along with other members of the administration, took the time to sit down with us for literally hours at a time, put us through our paces to convince him on a case-by-case basis with a reasoned argument, that the positions we were arguing were, in fact, sensible and defensible. And when convinced, he was willing to go back to his bosses in the Department sometimes and tell them I think we need to change this. He was willing to stand up to the industry when he was convinced that it was the right thing to do.

OURS HAS NOT ALWAYS BEEN A LOVE-IN WITH JIM CASON

I would also like to offer at this point the observation that ours has not always been a love-in with Jim Cason. We have had some tough times with him. There is, some place in the record over there, a 42 page letter that I sent to him last year, calling him everything but a swamp rabbit because we were not happy with the degree to which he had come our way on a number of issues at that time.

With regard to other strategy issues we are talking about this morning, in the September 30, 1989 closure, we had real problems with that, too, the issue of whether those audit periods should be kept open for fraud, collusion or underpayment. You seem to have some difficulty with the fact that the word underpayment had been dropped out of that.

The accounting officers of our tribes have gone over that a number of times, and we have concluded and agreed to accept dropping that word for this simple reason, that the purpose of an audit is to determine whether or not there has been an underpayment. If the fact that there may have been an underpayment is a reason to keep an audit period open, there will really never be any closure of any audit.

The CHAIRMAN. Mr. Harrison, if I could interrupt you in that regard, you talked about the auditors going through that and the close working relationship and all. But the State and Tribal Royalty Auditors Committee sent a letter to the House of Representatives on May 12. I mention this because several of the major tribes with energy holdings are members of that committee.

In the letter, the States and Tribes discussed the process used by Interior and Mr. Cason to develop the new audit strategy. Unlike the kind of close relationship you speak of, they said the States and Tribes were not notified of these developments or consulted in the implications. The States and tribes, which would bear the financial

burden of the new audit strategy should have been given the opportunity to provide constructive comments or objection before the decisions were made.

In some instances, the policy decisions made privately are inconsistent with the Department's prior public positions. That does not sound like a happy group to me. It does not sound as though they are happy. Second, it does not sound as though they feel Mr. Cason was going to consult or work with them.

Mr. HARRISON. I do not think that is entirely inconsistent. As I indicated before, there is a 42 page letter that I sent to Jim Cason, taking vigorous issue with this, among a number of other things. You are absolutely right. The tribes and the States were outraged when they learned about that decision.

The CHAIRMAN. Especially as it benefited some very specific companies, to the detriment of the States and the tribes.

Mr. HARRISON. I think, if I may, sir, one of the reasons that we took such vigorous exception was that we simply did not know what had gone into that and we did not know who. We knew that certainly we were not going to benefit by closing off an audit period without our participation.

But as a result of that letter you just mentioned, the STRAC letter, our letters to Mr. Cason—and we are still not happy with a bunch of stuff that is going on over there. I want to make that clear. But at least there we think we have a man that we have been able to deal with.

As a result, among other things, each tribe now has an accounting department—and I have checked with them personally—and they have now agreed that they will identify to the Department those issues that they want kept open for the periods prior to 1979 and 1980. They like the idea of being able, forever and always, to look back and try to collect more. But they realize that that is not going to be a situation that anybody can live with forever, anymore than the companies ought to be able—another issue you mentioned—to always look back and try to recoup for what they recall as overpayments. There has to be a period of shutting this off.

The CHAIRMAN. They were not cut off. These companies were not cut off on being able to go back for overpayment. The States and tribes were cut off, except in very limited circumstances, but the companies were not cut off. The companies were still allowed to go back and claim overpayment.

Mr. HARRISON. As I say, that is one of the issues that we are not happy with. That will not last forever. I am confident of that, and in fact, I am quite confident that if this committee had jurisdiction, that probably would not have lasted this long.

But I am not trying to say that we have always been happy with the guy. That was one issue where we were very unhappy. But having brought it to his attention, the man—unlike anybody else in that administration—has taken the time to sit down for hours upon hours with us, and tried to work out something that everybody can live with.

I guess that is the principal point I am trying to make here, with respect to the issue of the kind of man we think this guy is. We do not agree with everything he has done or everything his bosses did over there for the last 8 years, by a long shot, but we have found

him to be, we believe, an honorable decent man who understands as few has when pointed out to him, that with respect to our issues and concerns, sometimes what seems like a piddly administrative problem to somebody in the Minerals Management Service, is in fact the sole source of livelihood for some Indian out there.

Jim Cason is the only guy in that last administration we found who seemed to appreciate that. So we have come to think a great deal of him and the character he has shown, in being willing to try to work with us.

[The prepared statement of Mr. Harrison and the attached letters follow:]

STATEMENT OF DAVID C. HARRISON
OF THE COUNCIL OF ENERGY RESOURCE TRIBES
DENVER, COLORADO 80203

BEFORE THE COMMITTEE ON AGRICULTURE
OF THE
UNITED STATES SENATE
OCTOBER 3, 1989

REGARDING THE NOMINATION OF JAMES E. CASON TO SERVE AS
ASSISTANT SECRETARY FOR NATURAL RESOURCES AND THE ENVIRONMENT,
UNITED STATES DEPARTMENT OF AGRICULTURE

Mr. Chairman, and members of the Committee, on behalf of the 43 federally recognized Indian tribes that comprise the Council of Energy Resource Tribes, I am delighted to be here today in support of the nomination of James E. Cason to serve as Assistant Secretary for Natural Resources and the Environment of the United States Department of Agriculture. If it please the Committee, I would like to submit for the record along with my testimony today copies of letters regarding Mr. Cason from the attorney for the Shoshone Tribe of Wyoming; from the attorney for a number of tribes and individual Navajo Indians in New Mexico; and from the Executive Director of our CERT organization.

The Council of Energy Resource Tribes is a tribal organization comprised of 43 tribes from the length and breadth of the contiguous 48 states. These tribes represent, and govern, more than one-half of all reservation lands in the United States and more than one-half of all Indians in the country.

A bit of background regarding our organization and its member tribes is in order to explain our appearance here today. Since its inception, the Council of Energy Resource Tribes has been dedicated to responsible stewardship of the environment. As was recently expressed in a letter to President Bush, we believe that we have much to offer the country in these matters, including the basic truth that while we inherit environmental values from our elders and our ancestors, the earth itself we borrow from the generations yet to come, and they will judge us largely by our stewardship of it, and the condition in which we return it to them.

In the Council of Energy Resource Tribes, we are not lobbyists for the environment; we are active stewards, and guardians, and protectors of it. It was we who had to take the government to court to establish the proposition that the National Environmental Policy Act itself does, in fact, apply to Indian lands. The CERT tribes have worked with the Congress throughout the past two decades to ensure that the protections of the nation's other environmental laws are available to Indian country.

Thus, such statutes as the Surface Mining Control and Reclamation Act; the Clean Water Act; the Safe Drinking Water Act; the Nuclear Waste Policy Act; the Superfund Amendments and Reauthorization Act; and the Food Security Act of 1985 all reflect the role that Indian country, and Indian tribes, play in the governance and environmental protection of our land. In this Congress, tribes are working with the Committees in both houses to ensure that amendments to the Clean Air Act and the Resource Conservation and Recovery Act also reflect the unique role of Indian tribes in the nation's governance and environmental protection. So active, in fact, have been these tribes in this arena that the U. S. Environmental Protection Agency has designated their organization, the Council of Energy Resource Tribes, as a National Environmental Resource Center for air

quality programs.

As I have indicated, we are not merely lobbyists for the environment; we are active stewards and protectors of it. The CERT tribes are actively engaged in such environmental protection programs as air quality monitoring; groundwater monitoring; water quality standards setting; underground injection control; pesticide regulation; solid waste disposal; abandoned mine reclamation; determination of facilities compliance in such areas as identifying asbesots in schools, lead in drinking water, and leaking underground storage tanks; community preparedness and emergency planning for hazardous and nuclear waste materials transportation; wastewater treatment plant operation; solid waste disposal; threatened and endangered species protection; hazardous waste disposal; and hazardous waste site clean-up and containment.

All of this, Mr Chairman, we point out simply to make the point that we would not be here to support the nomination of a man whose values we believed to be antithetical to our values and our efforts in the area of environmental protection.

Now, I would like to tell you how we came to know Mr. Cason. For a number of years, we had been involved in a continuing dispute with agencies of the Department of the Interior regarding minerals management issues and implementation of the Federal Oil and Gas Royalty Management Act of 1982. The Department, and the previous Administration, had designed a system to account for the nearly \$6 billion per year in revenues collected from oil and gas operations on federal and Indian lands, and the system was grossly inadequate for the needs of Indian mineral owners and unresponsive to their concerns. Less than 1.5% of these revenues came from Indian lands, and the Department's agencies had relegated this aspect of its operations to a level of concern commensurate with this percentage.

Our efforts to convince the agencies that their system was fatally flawed were met with uniform failure. The system they had designed, they assured us, was premised on assumptions by the Administration that were not open to discussion or debate, some of which, in fact, were explicitly stated as "conclusive presumptions." When we asked for meetings with agency officials, we were uniformly greeted by large contingents of bureaucrats who came equipped with prepared speeches, presentations, overhead projections, and detailed hand-outs designed to explain why our suggestions were unacceptable.

Unable to convince the career bureaucrats, we elevated our concerns to the Administration itself, along with the oil and gas industry, the public land states, and interested Committees of the Congress. The Administration official who was designated to bring these issues to closure was Jim Cason.

We approached our first meeting with him with little confidence,

and less hope. During an agonizing period, we had received no encouragement that the Administration was willing to listen to our concerns; the agencies had offered us no access to the Administration officials whose views they purported to be representing; certain assumptions had been made before we had joined the debate, we were told, and they were not open to debate; colleagues and even friends on Committees of the Congress told us we could not expect a fair or impartial hearing; the Department's predisposition to give the oil and gas industry whatever it wanted was a foregone fact, we were told.

For his part, Jim Cason had obviously been thoroughly briefed on us for our first meeting. It was clear that he knew a great deal about us and our concerns, and the Department's career bureaucrats had provided him with a dozen perfectly good reasons why we were not to be taken seriously. The things we were suggesting, he had obviously been told, were cost prohibitive; they were unacceptable to the industry; and, for the most part, simply did not make good sense from the agencies' perspective.

Something happened during our first meeting with Jim Cason, however, that his briefers obviously had not anticipated and, quite frankly, neither had we. Jim Cason listened to us. He did not come with a speech, or overhead projections, or other props designed to eat up the clock for the time allotted for our meeting. He came with a tablet and a pen, and he took notes as he listened to us.

We think that Jim Cason, the man, discerned in our comments a human dimension that had not been communicated to him by his systems people; we think he sensed in our views a concern with resource management on the local scale that was largely missing from his agencies' national schemes; and we think he recognized in us a sense of responsibility and willingness to be constructive that he had not been led to expect. It was he who suggested at the end of that brief meeting that further discussion was warranted. The following week, he again crossed the country, this time to spend an entire day with us, Indian mineral owners from throughout the oil and gas producing regions of the country.

Other meetings proceeded from that one; we spent literally dozens of hours with him in detailed negotiation, soul-searching policy deliberation, and sometimes heated, but always respectful, debate. During the course of these meetings, representatives of the industry were brought in to provide their views, as were the public land states, and representatives of the Comptroller General and Committees of the Congress. In the end, many of our suggestions were adopted; some of the Administrations previous "conclusive presumptions" were abandoned; a production accounting system was adopted to complement the revenue accounting system; and important missions of two agencies were realigned to provide more coordination to the resource management issues involved.

I would be glad to discuss the arcane details of these issues with the Committee, but I think they are not relevant to the issue of his confirmation to the position for which the President has recommended him today. The relevant point we want to make is that Jim Cason, alone among the Administration officials with whom we dealt on these issues, afforded us a hearing. He took the time to listen. He asked nothing more of us than rigorous analysis and intellectual honesty in our debates. And when we convinced him of the merits of our position, he demonstrated a willingness to reverse long- and ardently held agency positions. When our views and those of industry collided, he worked with both sides for mutually acceptable compromise. When that was not forthcoming, he demonstrated the courage to make a decision and took pains to explain to each side his reasons for it. And although he never shared with us the machinations of the internal deliberations of the Administration, it soon became clear that, when he is convinced, he is not a man who is afraid to walk in and close the door and say, "Boss, I think we are wrong on this one."

We did not get everything we wanted from Jim Cason in our dealings with him, and we will continue to work with his successors on those remaining issues. There were many policies and practices of the previous Administration with which we could never agree, and we suspect that will be true of this Administration as well. In the final analysis, however, that does not reflect a problem with, but, rather, the essence of, representative government.

There is a problem with representative government when the aggrieved cannot get a hearing; when the underrepresented cannot get access; when a priori assumptions are not allowed to be questioned; and when the powerful are accorded a deference out of all proportion to the fairness or merits of their position. In the area of responsible and environmentally sound mineral resource management that is the problem we faced in the previous Administration -- until we met Jim Cason.

Our opinion of this man does not come from his association with an Administration with which we often disagreed. Our views have not been formed by leaks from disgruntled career employees he has had the courage to reverse. Our measure of Jim Cason has not been taken in the press, but in the arena, where we have gone eyeball-to-eyeball and toe-to-toe.

We feel we have come to know the man, as well as the official, and he is a man who will listen; who will learn; who, in fact, when the situation demands it will master even the most excruciating detail of complicated issues in order to make a fair and informed decision; who will buck the bureaucracy and the industry when he believes it is the right thing to do; and who, perhaps more than any public servant we have known, has demonstrated a constantly recurring reference to the question, "Is it right?" In all this, perhaps, even more important than

the specific issues on which we have dealt with him, and more than any individual in the previous Administration, Jim Cason has demonstrated that so long as our government can attract men and women like him, the system and the process will be fair.

For these reasons, the 43 member tribes of the Council of Energy Resource Tribes are honored by the opportunity to appear here today and urge this Committee to give favorable consideration to the nomination of James E. Cason to serve as the Assistant Secretary for Natural Resources and the Environment in the U.S. Department of Agriculture.

We know from our own experience that in Jim Cason, the President has found a man sensitive enough to hear the smallest voice in the loudest debate; wise enough to weigh that voice for merit and not for volume; and tough enough to stand with that voice against the powerful when it is the right thing to do.

TEL No.

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June 1, 1989

The Honorable William K. Reilly,
 Administrator
 U.S. Environmental Protection Agency
 401 M Street SW
 Washington, D.C. 20460

Dear Bill:

I write regarding Jim Cason, who, as you probably know, was nominated by President Bush to serve as the Assistant Secretary of Agriculture for Natural Resources and the Environment. I understand that many of our friends in the national environmental community have opposed his nomination.

I do not know Jim's record on environmental matters. If he has an environmental conscience, I can imagine he had few opportunities to follow it when he was a deputy assistant secretary at the Department of the Interior under Secretary Hodel, in light of that Department's pro-development stance. I thought I would write to you on this matter, for what it's worth, because I had a fairly lengthy engagement with Jim during the development of a minerals policy by the Department of the Interior. During the course of that engagement, I found Jim to be open-minded, fair, and willing to be persuaded by intellectual honesty. Jim had a tough job of mediating between entrenched and opposed interests, including state, federal, industry and tribal interests. I felt that he did a commendable job of listening to all concerned and pursuing a fair and reasonable course of action.

Perhaps you might want to get to know Jim Cason. I believe you will find him to be a capable and honorable man who has something to offer this Administration. I hope all is well; please give my regards to Libbie.

With regards,

GOVER, STETSON, WILLIAMS & WEST, P.C.

By Susan M. Williams
 Susan M. Williams

SMW:and

NORDHAUS, HALTOM, TAYLOR, TARADASH & FRYE

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May 19, 1989

The Honorable Patrick J. Leahy,
Chairman
Committee on Agriculture, Nutrition & Forestry
United States Senate -- SR-433
Washington, D.C. 20510

RE: JAMES CASON--NOMINEE AS ASSISTANT SECRETARY OF AGRICULTURE
FOR NATURAL RESOURCES AND THE ENVIRONMENT

Dear Mr. Chairman:

Our law firm represents a number of Indian Tribes and an Indian allottee organization which have producing oil and gas leases on their lands. During 1987, the Department of Interior revised the Oil and Gas Valuation Regulations. We were active participants in the regulation formulation process of attempting to reach a consensus among all affected groups (Indian Tribes, Indian allottees, states, and the federal agencies) during much of that year. It is through that process that I was first introduced to, and developed a working relationship with, James Cason.

In order to fully understand and appreciate the importance of our recommendation in support of Mr. Cason's confirmation, you must realize and have a sense of appreciation for the difficulty that Indian Tribes and Indian allottee organizations have had in obtaining reasonable access and fair hearing before many of the agencies of the Department of the Interior. In fact, it is fair to say that the Minerals Management Service, among others, has in the past few years often exhibited outright contempt for the views of my clients on issues which directly affect them. And, in fact, the initial draft of the proposed Valuation Regulations were so incredibly one sided that it seemed at the time that they must have been written by the oil and gas industry and signed off on by the Department of the Interior. Amidst tremendous protest from the oil and gas producing Tribes, allottee groups, and affected states Jim Cason was asked to personally intervene and see if some sort of compromise could be worked out. His personal commitment to the process produced a workable compromise and avoided otherwise certain litigation.

I have, in my nineteen years of practice of law, dealt with many federal administrative agencies. All of my work has been on behalf of Indian Tribes and Indian people. In all of those years I have never encountered an individual who was willing to address my clients needs in as open, honest, and thoroughly understanding a manner as Jim Cason. Mr. Cason did not agree with every position that we argued for nor did he give us everything that we had asked for in the way of changes to the proposed Valuation Regulations; however, he uniformly made sure that each group or individual that requested to be heard was given an opportunity to fairly state their objection to the proposed Valuation Regulations, the suggested changes they wanted, the reasons that supported the changes or the objections, and he unfailingly responded

NORDHAUS, HALTOM, TAYLOR, TARADASH & FRYE
ATTORNEYS AT LAW

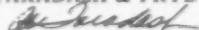
The Honorable Patrick J. Leahy, Chairman
May 19, 1989
Page 2

on the merits to each point. One can ask of absolutely no more than the qualities that Mr. Cason has demonstrated in great abundance in any public servant. Even though we still have some fundamental disagreement with the Valuation Regulations in some respects, on behalf of our clients we wish to endorse in the strongest possible way the confirmation of the appointment of James Cason as the Assistant Secretary of Agriculture for Natural Resources and the Environment. He is a man of unimpeachable integrity and candor--qualities that unfortunately are in all too short of supply in many federal agencies.

It is my understanding in some of the rather hysterical articles that I have read in the national media that there is some fundamental opposition to Mr. Cason's appointment coming from environmental groups. There are no groups in this country that are more astute stewards and guardians of the environment than the Indian Tribes and allottee groups that I represent. Mr. Cason's views of compatible uses with strong safeguards for the environment are totally consistent with my clients' views. We strongly urge you to give favorable consideration to his nomination and would be pleased to appear personally to testify in support of his confirmation if the committee should so desire.

Respectfully yours,

NORDHAUS, HALTOM, TAYLOR,
TARADASH & FRYE



Alan R. Taradash

ART/cbb

cc: Senator Max Baucus
Senator David Pryor
Senator David Boren
Senator Howell Heflin
Senator Tom Harkin
Senator Kent Conrad
Senator Wyche Fowler
Senator Thomas Daschle
Senator John Breaux
Senator Richard Lugar
Senator Bob Dole
Senator Jesse Helms
Senator Thad Cochran
Senator Rudy Boschwitz
Senator Mitch McConnell
Senator Christopher Bond
Senator Pete Wilson
Senator Slade Gordon
Senator Pete Domenici
Senator Jeff Bingaman



Council of Energy Resource Tribes

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April 24, 1989

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 Umatilla
 Ute
 Walker River
 Zia Pueblo
 Executive Director
 A. David Lester

The Honorable Patrick J. Leahy, Chairman,
 Committee on Agriculture, Nutrition, and Forestry
 United States Senate SR-433
 Washington, D.C. 20510

RE Urging Senate confirmation of James
 Cason as Assistant Secretary of Agriculture
 for Natural Resources and the Environment

Dear Mr. Chairman:

The Council of Energy Resource Tribes is an organization composed exclusively of 43 federally recognized Indian tribes located from the White Mountains of Maine to southern California, and from Puget Sound to the Everglades. It has come to our attention that the President has indicated his intention to nominate James Cason to serve as the Assistant Secretary of Agriculture for Natural Resources and the Environment, and that news of Mr. Cason's nomination has sparked a good deal of attention in the nation's press, particularly from the community that speaks primarily to environmental issues.

We would like to take this opportunity to advise the Committee on Agriculture, Nutrition, and Forestry of the United States Senate that the descriptions of Mr. Cason that we have seen recently in the nation's media, and particularly those descriptions which have been ascribed to our colleagues in the national environmental community, simply do not correspond to the man we have come to know and appreciate during his tenure in the Department of Interior.

First, let us be clear that the CERT tribes regard our emphasis on environmental values second to none; that our organization has been designated by the Environmental Protection Agency as a National Environmental Resource Center for air quality programs; and that we have worked closely with the Congress and EPA in recent years on such important environmental issues as the Surface Mining Control and Reclamation Act; the Nuclear Waste Policy Act; the Safe Drinking Water Act amendments; the Clean Water Act amendments; the Superfund Amendments and Reauthorization Act; and the Food Security Act of 1985, all of which are important components in the fabric of the nation's environmental laws, and all of which contain explicit provisions regarding the role that the nation's Indian tribes play in the administration and implementation of those laws.

The member tribes of the Council of Energy Resource Tribes are actively involved in a wide range of environmental activities, including air quality monitoring; groundwater monitoring; regulation of pesticide application; solid waste disposal; hazardous waste containment; water quality standards setting; nuclear waste transportation planning; abandoned uranium mine reclamation; underground injection control; asbestos in schools abatement; leaking underground storage tank location and remediation; wastewater treatment plant operation; and threatened and endangered species protection. In short, we believe that our environmental voice is as authoritative, if not as strident, as any in the country.

Thus, it has come as something of a shock to us to see so many of our colleagues in the environmental community reacting with such indignation to the nomination of James Cason to serve as the Assistant Secretary of Agriculture for Natural Resources and the Environment. We have had occasion to work as closely with Mr. Cason as with any person in the previous Administration, and we have uniformly found him to be a man of remarkable skill and perseverance in bringing consensus to seemingly hopelessly disparate views on matters of immediate and urgent interest to the affected communities.

In matters vital to our member tribes regarding revenues from oil, gas, and coal production from our lands, Mr. Cason was given the unenviable job of producing a regulatory structure that was acceptable to the industries operating on federal and Indian lands, the states who share in the royalties from federal lands, the Indian

tribes whose lands and revenues are directly affected, the government agencies who must administer whatever regulatory regime is adopted, and various committees of the Congress who had expressed enormous dissatisfaction with Interior Department practices over a number of years.

It has been our unfortunate experience over the years in public policy debates of such far-reaching consequence and magnitude that the views of such Indian tribes as may be affected are accorded little, if any, weight. In this instance, our experience was no different -- until Mr. Cason personally took charge of the process. In our considerable experience with government officials, Mr. Cason has demonstrated an extraordinarily uncommon willingness to dedicate the time required to understand all sides of complicated public policy debates, and to make decisions that reflect equitably the merits of all views presented.

In our case, we found Mr. Cason to be most respectful of our views. In fact, in the final rulemakings many of our suggestions which had been harshly opposed by the oil and gas and coal industries and summarily rejected by the agency, were ultimately accepted not only for the administration of our properties, but also for the administration of federal properties as well. While the final product did not reflect in any sense a "victory" for any of the affected communities, it did reflect a consensus that after years of often vitriolic debate a compromise had been carefully crafted that all the affected communities could accept.

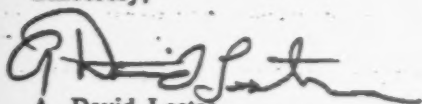
In our view, President Reagan and the American people were well served by James Cason in the Department of the Interior, and we have no doubt that President Bush and the Department of Agriculture will be equally well served by him in the present Administration. As a result of the unique relationship which exists between the United States and her Indian tribes, no group of people in this country is more directly affected by the personalities, prejudices, and predispositions of government officials than are American Indians.

It would be a simple matter for us to join the chorus clamoring against the confirmation of James Cason because we did not get everything we wanted from him in a contentious issue. When that becomes the standard for service, however, ours will have become a government in which only the strong can claim to be right. James

Cason gave us something we had not had before in that contentious issue. He gave us an opportunity to be heard. And having been heard, we prevailed on some issues and not on others. That, coupled with an abiding sense of fairness and probity, we believe, characterizes the man or woman fit to serve a democratic society. We believe James Cason is such a man, and we respectfully urge the Committee on Agriculture, Nutrition, and Forestry of the United States Senate to give favorable consideration to his nomination to serve as the Assistant Secretary for Natural Resources and the Environment in the Department of Agriculture.

Should it please the Committee, we would be pleased to appear before the Committee in support of his confirmation.

Sincerely,



A. David Lester,
Executive Director

cc: [Identical letters to]

Senators:

Max Baucus

David Pryor

David Boren

Howell Heflin

Tom Harkin

Kent Conrad

Wyche Fowler

Thomas Daschle

John Breaux

Richard Lugar

Bob Dole

Jesse Helms

Thad Cochran

Rudy Boschwitz

Mitch McConnell

Christopher (Kit) Bond

Pete Wilson

Slade Gorton

The CHAIRMAN. Did he deal with the problems you had on the audits before he was nominated to this position or after?

Mr. HARRISON. Actually, that has been going on for some time.

The CHAIRMAN. He was nominated in May.

Mr. HARRISON. Our dealings with him on audit issues go back at least to April of 1987 when, in fact, it was we who pointed out to him in the first place, that their proposed audit strategy, we thought, was fatally flawed for a number of reasons.

The CHAIRMAN. The letter you sent was May 12. The correction did not come until after the nomination. Is that what you are saying? I do not want to put words in your mouth.

Mr. HARRISON. It is not entirely corrected, yet. The final agreement that we are working on right now, you are quite right, have only taken place in the last few months.

The CHAIRMAN. Senator Conrad.

Senator CONRAD. Just one question, Mr. Chairman. Do we have a copy of the letter that you sent to Mr. Cason at the time of the decision?

Mr. HARRISON. I do not think you do, Senator Conrad, but I will be delighted to get you a copy. In fact, I think we have two letters, going back over a period of the last couple of years.⁴

The CHAIRMAN. I have a couple of constituents that sent me a 42 page letter, but I am always delighted to see one.

Senator CONRAD. I have never seen a 42 page letter. For no other reason, I would like to see just what a 42 page letter looks like.

Mr. HARRISON. I would be delighted. We thought we would get his attention with the heft, if nothing else.

Senator CONRAD. Would that be single-spaced or double-spaced?

The CHAIRMAN. You have to wait to see the letter.

Mr. HARRISON. It was single-spaced. In fact, there was a good deal of discussion among our members whether or not that was a sensible thing to do. But we thought, at the time, it reflected our mood and our views about some of the things that were going on over there. I will be delighted to share that with this committee.

The CHAIRMAN. I would like to see a copy of it, too.

Mr. HARRISON. My principal point here, of course, Mr. Chairman is that we believe that the fact that we have disagreed with much that administration did does not detract from the fact that we believe that in this man they had a diamond in the rough over there, and it was rough.

The CHAIRMAN. Thank you very much, Mr. Harrison. I appreciate your being here.

Mr. HARRISON. Thank you, Mr. Chairman. I will provide those to your committee.

The CHAIRMAN. Yes, just send it over here to the committee staff. We will make sure that Senator Conrad gets a copy.

Our next witness is Mark Rey, the executive director of the American Forest Resource Alliance. Mr. Rey, glad to have you here, sir. Thank you for your patience in waiting to testify.

⁴ See pp. 287-293 for letters submitted by David C. Harrison.

**STATEMENT OF MARK REY, EXECUTIVE DIRECTOR, AMERICAN
FOREST RESOURCE ALLIANCE, WASHINGTON, DC**

Mr. REY. In the interest of time, I will just summarize my prepared statement for the record.

INTRODUCTION

In testifying before you today I would like to speak briefly about Mr. Cason specifically, as well as to discuss the confirmation process as it relates to the nomination before you.

OUR REPRESENTATIVES FOUND MR. CASON TO BE FAIR AND IMPARTIAL

Representatives of our industry have met periodically with Mr. Cason when he was associated with the Department of the Interior and found him to be fair and generally impartial in representing the Department's position on matters affecting the forest products industry. His door was open to us and, we believe, other groups on issues of concern to them. While not always satisfied with his decision, we believe that we did receive a full and fair hearing of our views.

**MR. CASON HAS A STRONG BACKGROUND IN A WIDE RANGE OF
MULTIPLE-USE AREAS**

Moreover, Mr. Cason has a strong background in a wide range of multiple-use areas, starting with his agricultural and forestry background in the Pacific Northwest.

I would further observe that Mr. Cason is, in our view, uniquely qualified to serve as an Assistant Secretary. As both the Special Assistant to the Director of the Bureau of Land Management and as a Deputy Assistant Secretary at Interior, Mr. Cason comes to this assignment with a better working knowledge of an Assistant Secretary's responsibilities—that is, what an Assistant Secretary does, what he can do—and the limits on his tenure and time than virtually any nominee for this type of position in this or in previous administrations.

BRIEFLY DISCUSS THIS NOMINATION IN A BROADER CONTEXT

With that I would like, as I indicated earlier, to briefly discuss this nomination in a broader context because over the course of the last several months, since Mr. Cason's nomination was made public, we have observed an almost unprecedented interest group campaign designed to demonize and caricature the candidate, his background, and his record at the Department of the Interior.

The techniques involved in this campaign have been those which are commonly used in many special interest group legislative battles. Indeed, as a special interest group representative myself, I think I can speak with some authority to the techniques because we all use them in dealing with legislative issues. In this type of campaign it is important, as I know you understand, to stake out a strong position early. Then when the final amendments are drafted and the last compromise is struck, your position will be more favorably reflected in the outcome. However, there can be no "Cason

with amendments" as the final conclusion to your deliberations today, and later, and I do not envy you your task.

We view with reluctance the interjection of greater interest group pressure in the confirmation process. My testimony and presence here today is unique in some respects, because the forest products industry had not made it a habit of either testifying on behalf of, or in opposition to, Presidential nominees.

However, the type of prospective attack on a nominee we have witnessed trouble us because it is primarily based upon where he or she came from, without regard to how he or she might perform in public office. As such, it represents one of the most corrosive developments in contemporary politics and in our society at large. Advocates like me and others, by definition, have very few doubts about the positions they advocate. In a process heavily influenced by professional advocates, the "benefit of the doubt" will quickly become a quaint artifact of an earlier era in which there was considerably greater trust in the public discourse.

CONCLUSION

As I said earlier, I do not envy you your task, but I do hope you will fairly evaluate Mr. Cason's nomination, based on his credentials, and be able to render your decision promptly so that the business of government may proceed.

I thank you for the opportunity to testify and would be happy to answer any questions that you might have.

[The prepared statement of Mr. Rey follows:]

Statement of Mr. Mark Rey, Executive Director
American Forest Resource Alliance

My name is Mark Rey. I am Executive Director of the American Forest Resource Alliance headquartered in Washington, D.C. I appreciate the opportunity to testify.

The American Forest Resource Alliance is an ad-hoc coalition of forest industry associations, groups, and individuals from all regions of the country working together to bring greater emphasis on, and generate more support for, the industry's timber supply programs. The Alliance attempts to draw together individuals, communities, companies, and organizations dedicated to the wise-use and renewal of America's public and private forests. The Alliance is a relatively new effort, started in May of this year, to provide a greater sense of urgency in addressing America's crucial public and private timber supply needs.

In testifying before you today concerning the nomination of James Cason as Assistant Secretary of Agriculture for Natural Resources and Environment, I would like to both speak specifically about Mr. Cason, as well as briefly discuss the confirmation process as it relates to the nomination before you.

Representatives of our industry met periodically with Mr. Cason when he was associated with the Department of the Interior and found him to be fair and impartial in representing the Department's position on matters affecting the forest products industry. His door was open to us and, we believe, other groups on issues of concern to them. While not always satisfied with the final decision, we believe that we did receive a full and fair hearing of our views.

Moreover, Mr. Cason has a strong background in a wide range of multiple use areas, starting with his agricultural and forestry background in the Pacific Northwest. My direct experience with Mr. Cason also suggests that he strongly supports balance among the multiple uses of our public lands. I can recall one meeting with the Mr. Cason that I personally attended to discuss funding needs for the Bureau of Land Management's timber sales program. While not unsympathetic to increased funding to respond to forest products demand, Mr. Cason made it clear that funding for the various BLM resource programs would be in balance.

I would further observe that Mr. Cason is uniquely qualified to serve as an Assistant Secretary. As both the Special Assistant to the Director of the Bureau of Land Management and as a Deputy Assistant Secretary at Interior, Mr. Cason comes to this assignment with a better working knowledge of an Assistant Secretary's responsibilities and the limits on his tenure and time than virtually any nominee for this type of position. The mandate and responsibilities of his former Interior office are, in many important respects, similar to those of the position for which you are now considering him. I do not believe that a credible case can be made that he is unqualified to discharge the responsibilities inherent in the position for which he is being considered.

As I indicated earlier, I would also like to briefly discuss this nomination in the context of: (1) what you will hear later today from other groups; and (2) how these matters relate to the Senate's advise and consent authority. Over the course of the

last several months since Mr. Cason's nomination was made public, we have observed an almost unprecedented interest group campaign designed to demonize and caricature Mr. Cason, his background, and his record at the Department of the Interior.

The techniques involved in this campaign have been those which are commonly used in many special interest legislative campaigns. These include direct-mail, telephone banks, dramatic press conferences, background media briefings, and other forms of grassroots and political mobilization. Indeed, as an interest group we use them as well in dealing with legislative issues. In this type of campaign it is important, as I know you understand, to stake out a strong position early. Then when the final amendments are drafted and the last compromise struck, your position will be more favorably reflected in the outcome. However, this is not a debate over a piece of legislation, and there can be no "Cason with amendments" as the final conclusion to your deliberations.

There is no question that the special interest groups that will testify before you today -- including our group -- will not in every instance agree with how Mr. Cason may render the policy decisions that he will be required to make should you see fit to confirm him. It is less clear whether such disagreements are particularly relevant to his fitness for the job.

We view with extreme reluctance the interjection of greater interest group pressure into the advise and consent process. My testimony and presence here today is unique in some respects, because the forest products industry has not made a habit of either testifying on behalf of, or in opposition to, Presidential nominees. However, the type of prospective attack on a nominee we have witnessed troubles us because it is primarily based upon where he came from, without regard to how he might perform in public office. As such, it represents one of the most corrosive developments in contemporary politics and in our society at large. Advocates, by definition, have very few doubts about the positions they advocate. And in a process heavily influenced by professional advocates, the "benefit of the doubt" will quickly become a quaint artifact of an earlier era in which there was considerably greater trust in the public discourse.

I hope that you will evaluate Mr. Cason's nomination, based on his credentials and fitness for the office and be able to render your decision promptly to enable the business of government to proceed.

I appreciate the opportunity to testify and would be happy to respond to your questions.

The CHAIRMAN. One of the things we need to do is to foster some better relations, as I said in response to earlier testimony, between environmental groups, forest products industry and others. Do you see Mr. Cason as helping foster those better relationships? Will he be able to have credibility in both camps, in trying to bring them together?

Mr. REY. I think he has that potential. That is one of the hardest elements of the job to evaluate prospectively. Certainly, people like Walter Hickel on first impression didn't appear to have that capability, but later developed it.

I appreciate the desire to get the interest groups involved in the national forest debate, speaking together with less acrimony. I think that is necessary. I understand and hope that your committee will be a party to making that happen this fall.

But I have to tell you honestly, there has been no Assistant Secretary of Agriculture for Natural Resources and Environment for the past 8 months and, if you listen to Chairman Whitten on the other side there has not been one for about 2½ years. The quality of the discourse has deteriorated, notwithstanding the lack of involvement from that office.

If you read this month's Sierra Club Journal, you will find an article that provides the hat color of all the top political and career office-holders in this administration. You will find that Dale Robertson's hat has gone from white to gray. If you read the narrative, you would have to conclude that I have somehow coopted Mr. Robertson over the course of the last months, at least insofar as the author of that article was concerned.

So there is a need for less acrimony in the debate. I would hope that Mr. Cason can contribute to making that happen. Prospectively, I do not have the foggiest idea as to how that will turn out.

The CHAIRMAN. A candid answer, and I thank you very, very much. I have no further questions, but I thank you for taking the time to be here.

Mr. REY. Thank you.

The CHAIRMAN. Our last witness is George Frampton, the president of The Wilderness Society here in Washington. It is good to see you, again no stranger to Capitol Hill. Glad to have you here. Go ahead.

STATEMENT OF GEORGE T. FRAMPTON, JR., PRESIDENT, THE WILDERNESS SOCIETY, WASHINGTON, DC

Mr. FRAMPTON. Thank you, Mr. Chairman.

A VERY DELICATELY CRAFTED COMPROMISE ON CUTTING TIMBER IN THE PACIFIC NORTHWEST

As you know, in the past few days, the Senate and the House have fashioned a very delicately crafted compromise on cutting timber in the Pacific Northwest. About half the timber that comes off the Federal lands in the country every year comes from Oregon and Washington.

That compromise is designed to protect old-growth ecosystems and spotted owl habitat and still minimize the impact on timber in-

dustry jobs. It is very important that we make that compromise work.

There are a lot of different interests that have or should have a good-faith desire to make that compromise work. Members of Congress, on both sides of the aisle, want to make that compromise work.

THIS COMMITTEE HAS SOME VERY IMPORTANT OVERSIGHT RESPONSIBILITIES TO SEE THAT THAT COMPROMISE WORKS

This committee has some very important oversight responsibilities to see that that compromise works, because if we can make it work, we may open up some paths to a long term solution of this very difficult problem. If we cannot make it work, we are all going to be back here in 8 or 9 months with a higher level of discord and divisiveness.

TO MAKE IT WORK IS GOING TO REQUIRE NEW LEADERSHIP IN THE U.S. FOREST SERVICE

To make it work is going to require new leadership in the U.S. Forest Service, new leadership from the top down. It is going to require the kind of leadership that has credibility, that is willing to listen to all sides.

MR. CASON IS LESS LIKELY TO MAKE THIS COMPROMISE WORK

I cannot think of a single person in the United States who is less likely to make this compromise work than Mr. Cason. His record aside, the fact is that he has no credibility with the environmental community. He has no credibility with the professional service, as you heard from Chief Peterson this morning. He has no credibility with government scientists. It is no great secret that his support from the Pacific Northwest delegations is very late and a little reluctant. Even his own hometown newspapers say unkind things about him, the ghost of James Watt and so forth.

Is this the man we want trying to provide the leadership to make this compromise work? I would submit to you the answer is no.

As a person who has taught constitutional law and even taught a semester course of Presidential powers, I am fully aware of the deference that the President is entitled to and receives, particularly with respect to sub-Cabinet positions, in choosing his subordinates in the executive department. Nonetheless, that deference is not unbounded.

This committee has a responsibility to exercise an independent judgment. Citing the recent precedent of the Senate Judiciary's refusal to confirm Mr. Lucas to be Assistant Attorney General for Civil Rights, I would argue to this committee, members from both sides of the aisle, that that usual broad deference is overcome when four factors are present. They were present in Mr. Lucas' case and they are present, with a vengeance, here.

STANDARD OF REVIEW

First, the office is one which carries with it a very important national mission. The Assistant Secretary of Agriculture is in charge of public forestry and public forests in this country, but also a lot

of the conservation programs for American agriculture and our Federal policy with respect to forest lands in this country, private forest lands in this country, and our forest policies around the world.

Second, the position is one in which the Assistant Secretary has traditionally exercised enormous autonomy. Much more so than in the case of the civil rights program of the Justice Department, this Assistant Secretary of Agriculture has traditionally run these programs and carried out the mission and the mandates of Congress with very little involvement from the Secretary of Agriculture or his staff, as you well know.

Third, the nominee is completely unqualified, by training or experience, for the position. As Mr. Cason, himself, admitted to me the first time I interviewed him, prior to our taking a position on his nomination way back in April.

Fourth, by his record or by his testimony, or both as is the case here, the nominee has demonstrated that he simply does not have the commitment to carry out the mission of the office and the mandates and policies of Congress that go with it. In this case, Mr. Cason's record is consistent. There is nothing equivocal about it. There is no big dispute about it. It is abysmal.

CONCLUSION

The question really comes down to whether this is the man that this committee, exercising both its Constitutional and its oversight responsibilities, wants running these programs.

On behalf of The Wilderness Society and my colleagues in the environmental community, I would make a bipartisan plea to both Republican and Democratic members of this committee, to consider very carefully what is at stake here. I do not believe, that in rejecting Mr. Cason, you have to say no to the administration.

There is no question in my mind that President Bush had not a clue who James Cason was when he was nominated. It is clear that there are people in the White House and in the administration who now realize that Mr. Cason stands to be an important albatross to this administration, in carrying forward its announced desire to take a more balanced approach to public resource management.

This committee has an opportunity not only to do something for the forests and agriculture and conservation programs in this country, but to give the administration another opportunity, which I would suggest to you it is possible many in the administration would welcome, to choose somebody truly good for this job.

I would plead with the committee that the vision that Mr. Cason represents, surely you do not have to accept this stunted vision. Surely the administration can do better. Give it an opportunity to do better, to do the job that the President and some of his people say they want to do.

Surely, in the exercise of your responsibilities, oversight and Constitutional responsibilities, you can just say no to Mr. Cason.

Thank you.

[The prepared statement and attached exhibits of Mr. Frampton follow:]



THE WILDERNESS SOCIETY

STATEMENT OF GEORGE T. FRAMPTON, JR., PRESIDENT OF THE WILDERNESS SOCIETY, ON THE NOMINATION OF JAMES E. CASON TO BE ASSISTANT SECRETARY OF AGRICULTURE FOR NATURAL RESOURCES AND THE ENVIRONMENT, BEFORE THE U.S. SENATE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY, OCTOBER 4, 1989

Introduction

Mr. Chairman, I am George T. Frampton, Jr., President of The Wilderness Society, a national environmental organization with over 330,000 members nationwide. The Wilderness Society is devoted to the preservation and proper management of our nation's federal lands — over thirty percent of the land base of the United States — and the natural resources dependent upon them. These lands belong to all of us as Americans. They are a sacred trust, the most precious gifts we can hand down to our children and grandchildren.

It is precisely because the federal lands are so important to our future as a nation that The Wilderness Society joins with virtually every major national environmental organization in vigorously opposing the nomination of James Cason to be Assistant Secretary of Agriculture for Natural Resources and the Environment. Mr. Cason is not an unknown quantity. To the contrary, since joining the Interior Department of Secretary James Watt in 1982, Mr. Cason has made or participated at a Senior level in a number of decisions on important issues affecting the public lands. A review of those decisions reveals a consistent bias towards resource exploitation and against prudent land management, conservation, and wildlife preservation. He has provided windfall profits to a few businesses at

the expense of the federal treasury. One searches in vain for any decisions that placed protection of the environment above private economic gain.

The chief environmental officer of the Department of Agriculture should not be a person with such a one-sided, unbalanced view of stewardship. This is especially true at a time when the Department, and particularly the Forest Service, face crucial decisions about future directions for management of the National Forest System. How much Pacific Northwest old growth forest should be preserved? Can the delicate interim old-growth compromise just reached by the Senate and House be implemented fairly and effectively by the U.S. Forest Service in FY 1990, to protect habitat and jobs -- or will the compromise fail, bringing us all back to square one on this divisive issue next year? Should below cost timber sales be phased out? Should the forests surrounding Yellowstone National Park and Great Smoky Mountains National Park be managed to protect the environmental values of the ecosystems of which they are a part? Do the changing economics of land management in the West and the need to pass on to our children a liveable world require a change in the timber-first philosophy pursued by the Forest Service for the past several decades? These are fundamental and difficult questions, and they are all now in the Assistant Secretary's "In" box. It is absolutely essential that the person sitting in the Assistant Secretary's chair have the confidence of all of the conflicting interest groups with a stake in the outcome of these issues, so that all views will receive a fair hearing. James Cason has shown that he is not such a person.

There are rare occasions when traditional deference to the Executive's choice for a subcabinet position may be outweighed by countervailing considerations. Such an occasion arises when the position embodies a critical national mission and its incumbent is expected to carry out important congressional policies; when the appointee can be expected to exercise virtually autonomous sway over the interpretation of his mandate; when the nominee for the position is demonstrably unqualified for it; and when the nominee's record clearly shows that he is unlikely to fulfill the national mission involved, as Congress intended it be carried out. This is such an occasion.

Mr. Cason's Record

As a result of an extensive review of Mr. Cason's record at the Interior Department, the environmental community compiled a list of examples which demonstrate that Mr. Cason is not an appropriate choice to be Assistant Secretary of Agriculture.

Two of the most significant charges that the environmental community has leveled at Mr. Cason were explored in depth during Mr. Cason's appearance before this committee. Mr. Cason's responses confirmed the validity of the charges and have heightened our sense of alarm over this appointment.

Spotted Owl Report

The first charge is that Mr. Cason suppressed a draft report of a BLM task force that he appointed to examine the status of spotted owls on so-called "O&C" timber lands administered by the BLM in Oregon. He did so after the draft reached the conclusion that, at current rates of old growth harvesting on these lands, the spotted owl would probably qualify for listing under the Endangered Species Act in 4 to 6 years. In his testimony before this committee Mr. Cason admitted that in a meeting to discuss the report he asked if all copies were in the room; that at the conclusion of the meeting all copies were collected (he doesn't remember if that was done at his direction -- others present say that it was); that he made the decision not to continue work on the report; that in fact no further work was done until a copy of the draft was leaked to the press; and that only then was a decision made to rewrite the report with the offending passages omitted.

Mr. Cason now says that he decided not to continue work on the report because studies of the spotted owl were under way by the Forest Service and Fish and Wildlife Service. However, that newly conceived explanation does not comport with the facts. Mr. Cason's own testimony leads inexorably to the conclusion that Mr. Cason attempted to deep-six the report of his own biological experts because the inevitable result of accepting its analysis would be a reduction in old growth timber harvesting on BLM lands.

Oil Shale "Give Away"

The other charge of the environmental community which the Committee explored in detail with Mr. Cason involved his participation in the "give away" of federal oil shale lands at \$2.50 per acre. We alleged that while Congress was actively attempting to deal with this complicated issue affecting claims grandfathered by the 1920 Mineral Lands Leasing Act and was considering raising patent fees significantly, Mr. Cason met with claimants in the summer of 1988 and urged them to file patent applications. In December of 1988 Mr. Cason informed Congress that the Department intended to resume processing patent applications. A GAO report found that 17,000

acres of oil shale lands were patented for \$42,000 and resold for \$37,000,000.

In his testimony Mr. Cason admitted meeting with claimants in the summer of 1988, and acknowledged that after this meeting the number of patent applications jumped. He denied, however, urging the claimants to file applications. When confronted with prior inconsistent testimony that he had given in the House, Mr. Cason offered the implausible explanation that he was not being "proactive," but that the claimants took it upon themselves to file after listening to what he had to say. In a revealing exchange, one Senator asked Mr. Cason whether his actions could reasonably be interpreted as taking last minute action to benefit a few at the expense of the public interest. Mr. Cason responded that he was responsible for balancing private rights and the public interest. When pressed about whether it was in the public interest to give away oil shale lands for \$2.50 per acre, Mr. Cason responded that it was in the public interest to protect private rights. While that is true as far as it goes, we are concerned that Mr. Cason does not appear to understand that private rights and the public interest are not always synonymous.

We might understand these two actions if they were part of a series of decisions which, over the years, represented a balancing of the various aspects of the public interest. Unfortunately, the two are characteristic of Mr. Cason's single-minded choice of private interest over public, whether it be the public treasury or the public lands. The Committee could just as easily have asked Mr. Cason about any of the following decisions and actions and received the same response from him.

Coal Mining in National Parks

In 1977, Congress passed the Surface Mining Control and Reclamation Act which prohibited surface coal mining operations in national parks and other special areas, subject to valid existing rights. Subsequently, the Park Service recommended to the Office of Surface Mining a definition of valid existing rights that would have protected parks across the country from new coal mines. Under the Park Service's definition, valid existing rights would be recognized for coal companies which had obtained or made a good faith effort to obtain permission to mine before the Act was passed.

Mr. Cason attempted to bury the Park Service's recommendation. He stated in a memo dated September 23, 1986, attached to my written testimony, that he did not want the paper trail on the issue to include the Park Service's recommendation. He labeled the Park Service's concerns about the impacts of mining in

national parks "too strident" and dispatched members of his staff to come up with an alternate proposal.

The result was a rule that opens up the national parks of West Virginia and Illinois, as well as four million acres of wilderness areas, wildlife refuges and historic sites to possible strip coal mining. To prevent this mining, the federal government will be required to buy out mining claimants, even those who made no effort prior to the passage of the Surface Mining Act to exercise their rights. As far as we know, Mr. Cason made no estimate of the cost to the United States of buying out the claims or of the environmental damage to the public land which could result.

Federal Coal Royalty Reductions

On December 6, 1988, Mr. Cason directed BLM to prepare new final regulations reducing federal royalty payments from underground coal mines from the 8 percent level in previous regulations to 5 percent.

The basis for this decision was Mr. Cason's "intuition" that the lowered rate would foster the mining of coal previously left unmined. His decision notice is attached to my testimony and uses just this word. That intuition and Mr. Cason's "expectation" that there would be an elastic response to the 5 percent rate were not supported by any studies or other data indicating that this, in fact, would result. Nor are there any studies showing or suggesting that the royalties paid to the federal treasury by producers of previously unmined coal would equal or exceed royalties lost by the reduction of the royalty percentage to 5 percent. On the contrary, studies currently underway at the Department of the Interior reach the opposite conclusion. The royalty reduction will not promote the mining of marginal lands. It will only result in losses to the federal treasury.

Deduction of State and Local Severance Taxes

Another action indicative of Mr. Cason's choice of the private sector over the public interest is his decision concerning the severance taxes paid by coal producers to states and local governments. Mr. Cason decided to allow coal companies to deduct these taxes from the royalties paid to the federal government for coal mined on the public lands. His rationale was that these taxes would increase the cost of producing the coal resource, but not its market value to the companies.

Mr. Cason seems to have forgotten that the federal government owns the coal on public lands. It is a public resource for which the public has the right of a fair return. This policy robs the federal treasury. It passes the costs of producing and selling western coal from the companies profiting by these activities to the taxpayer.

Regulation of Mining Waste

Mr. Cason routinely reached beyond his own agency to oppose the regulatory activities of others. In December of 1988, he opposed the Environmental Protection Agency's efforts to regulate the wastes produced by mining and milling operations and oil and gas production wastes under the Solid Waste Act (RCRA). His reason for objecting was that "large volumes of materials and a large number of mining operations on the public lands" would be subject to regulation which would be very "costly" to mine operators and the BLM. Mr. Cason was apparently unconcerned about the environmental, safety, and health costs of leaving these wastes unregulated.

Oil and Gas Leasing in the National Forests

A final example of Mr. Cason's approach to public land management is particularly telling because it involves the Forest Service, the agency he has been nominated to supervise. In the 1987 Federal Onshore Oil and Gas Leasing Reform Act, Congress gave new authority to the Forest Service to manage oil and gas exploration and development activities on national forest lands. Congress also directed the Forest Service to prepare regulations to implement that authority.

Mr. Cason attempted to convince the Office Management and Budget not to publish the Forest Service's regulations because they might "discourage interest in oil and gas leasing" in the national forests and "provide disincentives" for development.

Under Mr. Cason's view, oil and gas leasing is to be a predominant use of the national forests, not one of the various multiple uses to be managed in the combination which best meets the need of the American people and protect the environment of the national forests. He disputed the Forest Service's authority to disapprove exploration and development activities, regardless of their impact on other resources or the environment of the forest.

The Forest Service's proposed regulations disappeared about the time he was nominated for the position of Assistant Secretary of Agriculture. We are uncertain whether they will ever see the light of day again.

Standard of Review

There is no ambiguity about Mr. Cason's record. Nor is there any question that he is woefully unprepared by training or experience to administer the nation's public forests (nearly 10% of the country's land base) or the conservation programs of American agriculture. The only relevant issue, therefore, is this: what is a reasonable and appropriate standard for this Committee to apply in considering whether to consent to his nomination?

The President is entitled to -- and invariably receives -- considerable deference in his choice of subordinates in the Executive Department. Nonetheless, that deference is not unbounded, and Congress has a duty to exercise its independent judgment.

There is recent precedent for Senate refusal to confirm the Administration's choice for an important subcabinet post that carries with it a mission of national importance. Within the past several months, the Senate Judiciary Committee rejected a nominee to a position in the Department of Justice because he demonstrably lacked any relevant experience for the job, and because his record failed to demonstrate a commitment to the mission embodied in the office and to congressional policies the office was created to carry out.

Mr. Cason's nomination presents an even more egregious case. The Assistant Secretary of Agriculture for Natural Resources and the Environment is one of the half dozen most important environmental officials in the federal government. He exercises great discretion in managing the nation's forest and soil resources, and in implementing the laws for which he is responsible -- with even less involvement or oversight by the Secretary and his staff than is true in the case of the Department of Justice's civil rights program.

In the case of Mr. Lucas, strong doubt developed as to whether he was committed to carrying out congressional policies and laws designed to root out discrimination. Mr. Cason's record, however, leaves no such doubts. It clearly establishes that Mr. Cason does not understand the concept of stewardship; that he is unwilling to respect congressional policies but looks instead to circumvent, reinterpret, or discover loopholes in congressional mandates where necessary to serve private development interests; that he is unconcerned about the public fisc or the independence of government scientists; and that he cannot be trusted to act for all the people in administering public lands.

It is ironic that at a time when the relationship of forests to global climate stability, to genetic preservation, and to clean air and water is receiving unprecedented public attention; when our own public forestry practices are under critical re-evaluation; and when even Latin American leaders fend off American criticism of rainforest destruction by pointing to our own poor history of forest management, the Administration proposes for this nation's chief forestry official a nominee whose record is so abysmal.

In a number of respects, 1990 may be the most important year for the United States Forest Service since World War II. In the past few days Congress has fashioned an intricately balanced -- but precarious -- one-year compromise for cutting federal timber in the Pacific Northwest. (This region produces about half the wood, by volume, cut from all federal lands in the United States.) Implementation of this program, delicately crafted to provide protection for old growth ecosystems and the spotted owl while minimizing job impacts in the timber industry, will require new leadership by the Forest Service, new direction from the top down.

Success in carrying out the congressional compromise could open a path to eventual resolution of this conflict. Failure will inevitably bring the issue back to Congress next year, at an even higher level of divisiveness and discord.

Mr. Cason is not the man for the job. He lacks any credibility with local or national environmental groups. He lacks credibility with the professional service and the scientific community. It is no secret that even his support from members of the Northwest congressional delegation was extremely late and distinctly reluctant.

A vote for Mr. Cason's confirmation will surely be a step in the direction of preventing the old-growth compromise crafted by Congress from working. This Committee has an important oversight responsibility for ensuring that the interim congressional old-growth compromise program is successfully implemented. Can it fairly discharge that responsibility while voting to confirm this nominee? We submit that the answer to that question is, "no."

As this Committee is well aware, other public forestry issues relating to below-cost timber sales, unnecessary roading, outdated silvicultural practices, and preservation of biological diversity are being seriously raised for the first time in decades. As we look to the balanced, professional and scientific review of these issues, does Mr. Cason represent the kind of leadership the country and the Congress want to see guiding our public forestry? We submit that the answer to that question is, "no."

Conclusion

For the foregoing reasons, we urge this Committee to consider carefully its constitutional and oversight responsibilities, and reject Mr. Cason's nomination.

[The exhibits follow:]



OFFICE OF THE
ASSISTANT SECRETARY

UNITED STATES
DEPARTMENT OF THE INTERIOR
WASHINGTON

September 23, 1986

PETER -

F.Y.I.

[Signature]

Karin Sheldon

NOTE

To: Danny Smith
From: Jim Cason
Subject: Attached Memo

EDUCATIONAL MATERIAL FROM
MINERAL POLICY CENTER
1325 MASSACHUSETTS AVE. NW, 0050
WASHINGTON, D.C. 20006

As I mentioned to you briefly yesterday, the NPS concerns on valid existing rights are perhaps a little too strident. I would prefer to not have our paper trail include this memo. I have suggested that Dennis Calvin, NPS, and Jim Workman, OSM, get together and chat about their concerns on valid existing rights and suggest to us mutually a suitable approach for this issue. Hence, I am returning this strident memo and asking for your assistance for an expeditious compromise that is workable for all concerned. Thanks very much for your attention to this issue. If you have questions, please call me and let's resolve it quickly.

Attachment

cc: Steve Griles
Jim Workman

[Signature]

PTR - 10/13

SEE IF THIS 11 MOVING
AROUND ?? HELP IT HAPPEN!
D. SMITH

Dennis Calvin & Jim Workman (OSM)
are working on this. Workman
has made a proposal to Dennis
but Dennis thought was
quite reasonable but suggested
to Carol Wiley for review.
Wiley has not yet responded
to Calvin yet. PTR



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 6 1988

Memorandum

To: Director, Bureau of Land Management
From: Deputy Assistant Secretary--Land and Minerals Management
Subject: Decision on final regulations governing Federal coal mined by underground methods

This memorandum establishes a record of decision for final regulations that will determine the basis for setting a production royalty for Federal underground coal leases. As you know, the Assistant Secretary has formally recused himself from further decisions regarding this issue. Therefore, I have assumed the responsibility for making the decisions required of this office. I have taken the time to consult with the Secretary and he concurs with my decisions.

Background

Section 7(a) of the Mineral Leasing Act (30 U.S.C. 207(a)) establishes the authority of the Secretary of the Interior to determine the production royalty for Federal coal mined by underground methods. In July 1979, final Department regulations established the underground coal royalty rate as follows:

Royalty rates shall be determined on an individual case basis [43 CFR 3473.3-2(a)(1)]...A lease shall require payment of a royalty not less than 8 percent of the value of coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant. [43 CFR 3473.3-2(a)(3)]

In a 1987 ruling by the United States Court of Appeals for the Tenth Circuit, Coastal States Energy Company v. Hodel, 816 F.2d 502, the Department was directed to follow its regulations and consider a royalty rate between 5 and 8 percent when setting the production royalty for a lease whose terms were being readjusted.

The Bureau of Land Management (BLM) then conducted an evaluation of the administrative costs involved in undertaking case by case analyses of the 53 pre-FCLAA underground coal leases whose terms and conditions have yet to be readjusted to the royalty rate prescribed in the regulations. These costs were projected at

approximately 2.24 million dollars, based on an estimate of between \$30,000 and \$50,000 per workyear per lease needed to determine the royalty rate for an individual lease. Additionally, several Western State Governors and U.S. Senators and Representatives had urged that the Department reconsider its underground coal royalty rate since the industry was experiencing difficulties in their states.

Because of these concerns, the Assistant Secretary for Land and Minerals Management requested that the BLM study the various factors that should be considered in assessing the proper royalty rate for underground coal. Subsequently, Department regulations were drafted to address 1) the administrative concerns stemming from implementation of the Tenth Circuit's ruling in Coastal States v. Hodel and 2) the factors that should be considered in setting underground coal royalty rates for Federal leases.

On July 29, 1988 the Department proposed regulations that would have deleted the requirement that "royalty rates shall be determined on an individual case basis." The proposed rules also sought comment on whether to choose a royalty rate of 5 percent, a rate of 8 percent, or a rate between 5 and 8 percent to replace the current regulation that sets a rate "...not less than 8 percent...except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant." The BLM, in concert with representatives from the Department Solicitor's Office, has briefed me on the public comments and the issues raised by respondents to this rulemaking.

My decisions on the form and content of the final rulemaking are founded on an administrative record consisting of studies, comments, and materials prepared by BLM and submitted by the public to the Department. Specifically, this record incorporates the comments received on the proposed rule, including attached support materials; a September 4, 1987 report by the Department of Energy/Energy Information Administration entitled "Potential Effects of Changes in Federal Royalty Rates" (SR/CD/87-01); a January 29, 1988 BLM draft study entitled "Analysis of Options for Setting Royalty Rates on Underground Coal Leases" along with a February 23, 1988 draft of this report; and a June 29, 1988 draft study by the BLM entitled "Review of Issues for Setting Royalty Rates for Underground Federal Coal Leases". Major affected parties were provided copies of the earlier BLM studies.

Issues

I. Determination of royalty rates on an individual case basis

In general, the adoption of a single, reasonable rate would relieve the BLM of the analytical burden of making case-by-case

rate determinations and would probably curtail legal challenges to the process of readjusting leases to a different royalty rate. The language in the existing regulation that permits a Federal lease royalty rate for underground coal "no less than 5 percent if conditions warrant" duplicates the Section 3. royalty rate reduction authority granted under the MLA by requiring a similarly analytical exercise each time a new lease is issued or an existing lease is readjusted. As no strong rationale was presented for keeping the current regulation, I am directing the BLM to eliminate the existing regulatory requirement that the royalty rate for underground coal leases be set on an individual case basis. Any need for addressing unprofitable operations would still be dealt with through use of the BLM's Royalty Rate Reduction Guidelines.

II. Determination of the royalty rate for underground coal leases

Although the rulemaking requested comment on the choice of a single royalty rate from within a range of 5 to 8 percent, all who expressed a view on this issue embraced either 5 percent or 8 percent. Establishing a royalty rate is essentially a discretionary decision. There was no analytical basis for determining a rate at 5 or 8 percent, although there was considerable expression of opinion on the perceived impacts of each rate. BLM has no documentation or analysis suggesting a rate other than these two numbers, and the available options for decision at this time are thereby limited to 5 percent or 8 percent.

After reviewing the administrative record, it is clear that the selection of either rate would result in a different set of advantages as well as disadvantages. The record does not clearly support either 5 percent or 8 percent, so it is within my discretion to determine which factors shall have the most weight in arriving at a decision. Based upon my review of the record, the following factors prompted my decision to select a rate of 5 percent:

- o Creation of a greater parity between the relative royalty obligations of underground and surface-mine coal operators on Federal leases
- o Recognition of the concerns of the elected representatives of Western States which are most directly impacted by the decision on setting a royalty rate for underground Federal coal
- o Unburdening ratepayers whose utility bills are supporting the Federal royalty payments
- o Strengthening the underground coal mining industry in Colorado and Utah, encouraging the greatest ultimate

recovery of coal, and maintaining a strong social infrastructure in communities where mining plays a significant role in the economy

Decision

I am hereby directing the BLM to prepare final regulations which would require payment of a royalty of 5 percent of the value of the coal removed from an underground mine. The preamble to the final rulemaking shall discuss the above factors and any others that were introduced through the rulemaking process. I believe this decision will enable the industry to mine in a healthy manner. One should expect an elastic response to a rate of 5 percent although it may be difficult to measure. Intuitively, this rate will foster the mining of coal which may have been left unmined and will permit companies operating at the margin to continue in hopes of further improvements in the market. Further, this recognizes the burden on utility customers - subjected to an expensive fuel mix.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
1760(140)

DEC 22 1988

Memorandum

To: Director, Office of Environmental Project Review
 Through: Deputy Assistant Secretary - Land and Minerals Management
 From: Director, Bureau of Land Management
 Subject: EPA proposed Rulemaking: Mining Waste Exclusion - (LX 30733)

1st James E. Canon
DEC 21 1988

We have reviewed the subject proposed rulemaking of the Environmental Protection Agency (EPA), published in the Federal Register on October 30, 1988 (53 FR 41266), and have the following comments. We understand that EPA is required to complete this rulemaking by February 1989, nonetheless, it should be rewritten to clear up the many serious ambiguities and reissued in draft form. If this is not possible, EPA should describe the status of mining and milling wastes and oil and gas production wastes in unequivocal terms.

The proposed rulemaking is intended to eliminate from the mining waste exclusion under subtitle C of the Resource Conservation and Recovery Act (RCRA) most wastes from the processing of ores and minerals. The proposed rule was developed in response to a court ruling which ordered EPA to develop a list of mineral processing wastes that meet the criteria of high volume and low hazard and thus remain temporarily excluded from subtitle C of the RCRA.

Unfortunately, while the EPA's definition of "high volume" wastes is fine as far as it goes, it misses an entire universe of waste products. "High volume" wastes can also be defined as a percentage of waste rock to valuable mineral. Most metallic ores mined in the U.S. today are in the 1 percent or less category. Mining and processing a ton of rock to obtain 20 pounds or less of valuable mineral could certainly be considered a "high volume" waste producer. In some cases the tenor of the ore can be as low as 0.01 percent.

If the proposed rulemaking is intended to address smelter wastes as opposed to mill tailings, which are considered in other regulations, then the proposal should be clearer on what is meant by low-hazard, high volume wastes.

The rulemaking is very ambiguous about the fate of "beneficiation wastes," which are mine and mill tailings. It is not clear whether they are excluded or not. If such wastes are no longer excluded, large volumes of materials and a large number of mining operations on the public lands will be subject to regulation under Subtitle C of the RCRA. This could be very costly to the operators and BLM.

The rulemaking also discusses oil and gas production. Again, the rulemaking is ambiguous about whether these wastes are excluded or not. If they are no longer excluded, the problems caused for BLM and the operators will be similar to, if not worse than, those related to mining.

We support the EPA position that identification of "low hazard" wastes would be premature. However, if the intent is to exclude mine and mill tailings, while reserving judgment on other wastes such as from smelters, this should be stated clearly. Also, EPA can identify other low hazard wastes only through careful study of the affected commodity sectors. At one time a Draft EPA report proposed a staged examination of the commodity industries followed by a Report to Congress and a Regulatory Determination. That report envisioned a total of 3 reports. Only one has been completed. We support the 3-report proposal with the process sector's wastes comprising the majority of the content of the third report.

On page 41291 of the proposal EPA describes the solid wastes generated by ore beneficiation as "normally crushed or pulverized rock or other earthen materials". While it is true that the majority of the waste materials are in fact rock of some sort, they also very often contain other materials such as heavy metals that are not recovered, residual chemicals from the beneficiation process, and so forth. To assume that the only product is innocuous rock is, at best, naive.

Under "Units of Measure" (page 41291), EPA requested comments on the use of ratios of relative waste volume to determine what constitutes "High Volume". It is inappropriate not to utilize an input/output ratio in this determination. Extremely high ratio of ore input to product output is one aspect of the mining industry that makes it unique. Congress, in approving the Bevill Amendment, recognized this unique problem facing the mining industry. For EPA to look at absolute tonnage and not also consider some form of input/output ratio clearly circumvents this Congressional intent.

The analysis done to comply with Executive Order 12291 may be insufficient. This proposal would have serious consequences and a full analysis should be conducted. Also, we question EPA's assertion that the total annual economic impact of this proposal is around \$25 million. It appears that EPA is defining "annual effect on the economy" in a extremely narrow manner to reach such a conclusion.

/s/ Dean E. Stepanek
Acting Deputy



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 20 1966

Ms. Pam Barr
Desk Officer
Office of Management and Budget
725 17th Street, NW., Room 3208
Washington, D.C. 20503

Dear Ms. Barr:

Enclosed are our comments on the Forest Service Proposed Oil and Gas Regulations. If you have any questions, please contact me. Feel free to share a copy with the Forest Service. Thank you.

Sincerely,

James E. Cason
Deputy Assistant Secretary
Land and Minerals Management

Enclosure

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

COMMENTS ON FOREST SERVICE PROPOSED RULEMAKING

GENERAL OVERVIEW

The stated purpose of the proposed Forest Service (FS) rule is to establish procedures for management of oil and gas leasing and surface disturbing activities on National Forest System lands. However, as proposed, the regulations may discourage interest in leasing or, when leasing does occur, provide disincentives to timely full development of leases.

We believe that these proposed regulations underscore a major philosophical difference between the Departments of the Interior and Agriculture. The rule now being proposed is in large part the result of a successful challenge brought against the FS over 8 years ago, in which the court found that FS failure to act on oil and gas lease applications that had been pending over 8 years constituted an illegal withdrawal. The court, at that time, ordered promulgation of rules that would allow timely processing of oil and gas lease applications. The court has since held the FS in contempt for failing to promulgate rules.

We do not discern any change in FS statutes, or in the stance of Congress or the Administration that would support management emphasis on selected resources within the Forest System. Accordingly, we ask that you suggest changes to the proposed rule that address our concerns.

With the passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Reform Act) and the resulting development of the subject regulations, we believe the FS has an opportunity to state an appropriate multiple use policy for FS lands.

Our specific concerns fall under two general headings -- legal interpretations and policy choices. Under each category we have listed some relevant examples.

LEGAL INTERPRETATION

Issue 1. Commitment to development: The FS does not appear to view the issuance of a lease as a commitment to allow development, and believe that such commitment is only made on an individual well basis and only at the time that operations are proposed and approved. While the words "contingent right" do not appear in the regulations, the impact is more insidious than if the words were used because potential lessees have no explicit notice their rights in the lease are limited. Further, had Congress intended a contingent right leasing system, it would have patterned the Reform Act after the OCS Lands Act which explicitly states that OCS leases do not authorize development. If development of OCS leases is subsequently denied by the Government, lessees are permitted to recover all of their costs. Onshore lessees have no such guarantee of recompense for government actions denying drilling rights. In the absence of a specific authority to deny development, the FS proposed regulations could be construed as a taking and a takings analysis should be prepared.

Lastly, the Secretary of the Interior has recently expressed Interior's policy on contingent rights stipulations. In correspondence between Secretary Hodel and Solicitor General Fried relating to *Conner v. Burford* litigation, the Solicitor General suggested "... Interior can include stipulations in future leases that make it absolutely clear that the Federal Government retains authority to prevent any significant environmental harm by the lessee, whether or not that harm is necessary to achieve the purposes of the lease (emphasis added)." Secretary Hodel replied as follows:

The solution proposed in your memorandum demonstrates the error in the Ninth Circuit's decision. It would require us to change the fundamental nature of an onshore oil and gas lease. You would have the Secretary exercise his discretion in a particular way, that is, to make all leases contingent. This approach would change the current practice of doing so only when the Secretary concludes, in the exercise of his best administrative judgment, that sensitive resources are present that require protection. In essence, your solution is a practical implementation of the court's decision that, in effect, mandates a substantive decisionmaking result, rather than a rational pursuit of the NEPA process.

We believe that your proposed solution sets a far worse precedent than anything the Supreme Court might say. Under such a precedent, every permit, license, lease or other authorization would have to be similarly conditioned and be subject to termination should an adverse environmental impact be realized.

The reason is that even if we prepare an EIS, we would face the same conclusion that failure to condition the leases with a "significant impact" or "no surface occupancy" stipulation is unreasonable if there is any chance that an adverse impact could occur, however unlikely. The result of your proposed solution is to change NEPA from requiring a predictive process to mandating the substantive result of conditioning every administrative decision so as to retain discretion to mitigate any adverse impact that was not predicted at the outset.

We believe that the Forest Service is misinterpreting or at least ambiguously describing its authority and that the Reform Act in no way disturbed the rights traditionally granted lessees. Such rights are described at 43 CFR 3101 which states that a lessee has the right to use so much of the surface of a leasehold as is necessary to extract oil and gas, subject only to stipulations attached to the lease, restrictions deriving from specific, non-discretionary statutes, and such reasonable measures as may be imposed by the authorized officer. In other words, the authority of the government to deny operations is limited. If it were not, the leases offered by the government would have only speculative value. As a consequence, bonus bids for leases within the National Forest System would be reduced, many lands would likely remain unleased, and discovery and development of potentially valuable deposits would not occur.

Issue 2. Material noncompliance with reclamation requirements: The proposed rule describes at 30 CFR 228.113 the procedures for determining whether a lesser is in material noncompliance with reclamation requirements and other standards as provided in 30 USC 226(g), or with regulations, lease stipulations, or a surface use plan of operation approved by the FS. The rule does not clarify which of these violations would result in a ban on future lease issuance. We read 30 USC 226(g) as limiting this sanction to noncompliance with reclamation requirements and other reclamation standards. As written, the rule would allow the FS to impose a ban on leasing on a company which is in noncompliance with something as minor as the "neatness" requirement of 30 CFR 228.107(h)(1).

Recommended solutions for issues 1 and 2: With respect to legal interpretations, we recommend that the preamble and proposed rule be revised such that wherever the authority of the Forest Service to deny operations is discussed, the limitations on the exercise of that authority be clearly stated. As a minimum, they should contain a clear statement that development of the lease can occur. A ban from future leasing would occur only for failure to comply with reclamation requirements or other reclamation standards.

Issue 3. Penalties for violations: The provisions of the proposed rule establishing sanctions for inspection and enforcement violations related to surface uses (30 CFR 228.111(e) and 228.112(a)(1)(v)) rely on authority from national forest statutes rather than that of the Mineral Leasing Act (MLA). This is incorrect since such sanctions can only be applied to violations of the law which authorized the action in the first place. The MLA does not incorporate national forest statutes; therefore, such violations can be subject only to penalties which are established under the authority of the MLA, its amendments or the Federal Oil and Gas Royalty Management Act (FOGROMA), if appropriate.

Recommended solution for issue 3: We recommend that the rule be revised to indicate that the authority for imposing sanctions for violations is derived from the MLA, its amendments or FOGROMA and not forest statutes.

POLICY CHOICES

Issue 4. Bonding requirements: FS regulations appear to require Forest Supervisors to base their recommendation for bond coverage on the estimated cost of reclamation for each and every well (36 CFR 228.10b).

SLM requires fixed minimum bond amounts (\$10,000, \$25,000 and \$150,000), but has the authority to increase the bond under specific circumstances that are spelled out in the regulations (43 CFR 3104.5). One example would be if an operator has caused the BLM to make a demand for payment under a bond within the last 5 years (prior to submitting the APD).

FS would require a bond for total reclamation costs under that bond. This policy overlooks risk analysis that recognizes that there is only a percentage likelihood, rather than a certainty, that the lessor will have to collect on the bond. It is likely that some potential lessees will be discouraged from investing in FS leases. Still others may speculate with FS leases, holding their leases without bond coverage until others have made a discovery or until approached by others with an offer to develop the lease. At the very least, it would sharply curtail the level of activity that any individual operator can afford to conduct simultaneously nationwide on FS lands, thus reducing the pace of development of the FS mineral resource.

Recommended solution for issue 4: For consistency, FS should adopt the language utilized in SLM regulations contained in 43 CFR 3104.5. This would permit the FS to recommend higher bond amounts on a case by case basis, without imposing unnecessary bonding requirements across the board.

Issue 5. Areas available for leasing: According to the proposed rule, the Forest Service would choose to commit to procedures for identifying potential leasing areas and for determining the "suitability" of lands for leasing. The procedures would require the Forest Service to:

- (1) identify areas that have potential for leasing as evidenced by ongoing production, a favorable geological environment, or ongoing industry interest;
- (2) develop a schedule that prioritizes those areas;
- (3) identify whether those areas are legally available;
- (4) review the relevant forest plan to identify standards and guidelines applicable to leasing; and,
- (5) find that leasing operations would be consistent with, or would not be precluded by, the applicable forest plan.

There are a number of problems with these procedures. The first involves the concept of identifying lands which have "potential for leasing," a task which, if it needs to be done at all, would best be done exclusively by industry. Through application of the criteria for identifying such lands, some portion of the Forest System will automatically be removed from further consideration for leasing. In effect, such lands will have been withdrawn without compliance with section 204 of the Federal Land Policy and Management Act.

second, oil and gas leasing would be made subordinate to other resource values and land uses by requiring conformance with forest plan standards and guidelines, regardless of whether such standards and guidelines were developed with consideration given to their impact on oil and gas development opportunities.

Similarly, a finding that leasing would be inconsistent with or precluded by a forest plan would result in an "unsuitability" determination, regardless of whether effects on oil and gas development opportunities had been considered when the plan was prepared. We question why the FS is proposing any type of suitability screen for oil and gas leasing. There is no provision in any law requiring a suitability finding for oil and gas leasing as there is in coal. If lands are legally available, they should simply be open to leasing and development subject only to stipulations and constraints deemed necessary to protect environmental values and to provide for multiple use.

Recommended solution for issue 5: We recommend that the preamble and proposed rule be revised to require the Forest Service to consider leasing on all lands that are legally available, to require that forest plans that would preclude leasing not be used as a basis for denial of leasing but be revised at the earliest opportunity, and to eliminate suitability screens.

The CHAIRMAN. Did officials with The Wilderness Society meet with Mr. Cason? Did your officials actually sit down and meet with him?

Mr. FRAMPTON. Yes, Mr. Chairman. Before we took a position on Mr. Cason's nomination, I asked for repeatedly and, in effect, put him in a position that he could not say no, to giving me and my senior staff several hours to interview him. Subsequently, I have talked to him on occasion, but my staff has had several very long meetings with him to explore his views and his background.

Nothing that I have seen or heard has, in any way, caused us to deviate at all from our initial impression, which is that this is an abysmal appointment.

The CHAIRMAN. I am also concerned about the delicate compromise worked out in the Northwest, and I realize it is one that no matter what is written down on paper or anything else, it is going to require men and women of good will and constant effort to make it work.

We are going to have a hearing on the 25th,⁵ on just that subject. I find myself reading more and more materials, books and everything else on the Northwest than I ever thought I would. In fact, I will have to find some time to go out there. But I agree with you, that it is not something that can just be the subject of a piece of paper. It is going to require the commitment and the credibility of people who are involved with it.

Mr. FRAMPTON. If I could comment on that, Mr. Chairman, individuals and groups with very different interests who have been fighting with each other now for more than a year to shape this agreement, now have a tremendous common interest in making it work. But making it work is not going to be easy. It is going to take, in spite of the fact that the Forest Service, arguably, has not exercised a lot of leadership in the forging of the agreement, this agreement throws on to them a heavy burden of responsibility to make it work.

Jim Cason is not the person to make it work, and there is a lot at stake here. I think that is something that members of the committee from both sides of the aisle, and in the entire Senate, have a reason to think very hard about before voting on his nomination.

The CHAIRMAN. Thank you because, as Chairman of this committee, I want it to work out there. I think most Members want it to work, and that is one of the reasons for the hearing, of course we want it to work for the long-term best interests of the region and the country.

Mr. Frampton, I appreciate your coming here and I will leave the record open only long enough if Mr. Cason wishes to add anything further. Other than that, there will be no further witnesses and the committee will vote on this at some future date.⁶

Senator Lugar, did you wish to add anything?

Senator LUGAR. No.

⁵ See Joint Oversight Hearing on the National Forest Planning Process as Provided in the National Forest Management Act of 1976—Full Committee and the Committee on Energy and Natural Resources—Oct. 25, 1989 (S. Hrg. 101-553).

⁶ On November 22, 1989, the nomination of James E. Cason, of Virginia, to be Assistant Secretary for Natural Resources and Environment, was returned to the President under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

The CHAIRMAN. I was just saying that Mr. Frampton was the last witness and I was saying that I will keep the record open until we ascertain from Mr. Cason whether he wants to add anything further, based on anything said either for or against him here this afternoon.

If he does not, then the hearing record will be closed and we will pick some appropriate time to vote on this.

Senator LUGAR. Very good.

The CHAIRMAN. Thank you very much, Mr. Frampton.

We stand in recess.

[Whereupon, at 3:07 p.m., the committee adjourned, subject to the call of the Chair.]

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